HANSEN, and Mr. PACKWOOD conferees on the part of the Senate.

Mr. LONG. Mr. President, I ask unanimous consent that the bill (H.R. 13367) be printed with the amendment of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

VOTES ON TREATIES TOMORROW AT 1:30 P.M.

Mr. ROBERT C. BYRD. As in executive session, Mr. President, I ask unanimous consent that the votes on the treaties which were to begin at 1 p.m. tomorrow begin at 2 p.m. tomorrow instead.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(Later, the following occurred.)

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the votes on the treaties which, under the order previously entered, were to begin at 2 p.m. tomorrow, begin instead at 1:30 p.m., with the first rollcall vote on treaties, which is to count for four votes, to last for not to exceed 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

BILL HELD AT DESK—H.R. 3605

Mr. HUMPHREY. Mr. President, I simply ask that a bill that came over from the House, H.R. 3605, an act to amend the Internal Revenue Code relating to the Federal excise tax on beer, remain at the desk pending further deliberation and disposal.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

S. 3664

PRIVILEGE OF THE FLOOR

Mr. HELMS. Mr. President, I ask unanimous consent that Mr. Dick Bryan, of my staff, be accorded the privileges of the floor during the consideration of S. 3664 and any votes thereon, and also Mr. Joe Heaton, of the staff of Senator BARTLETT.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent that Tom Brooks, Tony Cluff, Gil Bray, Lamar Smith and Steve Paradise be granted the privileges of the floor during the consideration of S. 3664 and any votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

GERMANENESS OF AMENDMENTS

Mr. HELMS. Mr. President, I further ask unanimous consent that all amendments in connection with this bill be required to be germane.

The PRESIDING OFFICER. Is there objection?

Mr. PROXMIRE. Mr. President, reserving the right to object, it is my understanding that the Senator from Idaho (Mr. CHURCH) has two amendments which I think are germane but I am not sure. I would appreciate it very much if the Senator would withhold that request until Senator CHURCH can be notified.

Mr. HELMS. Mr. President, I will amend my request to exclude those two amendments.

Mr. PROXMIRE. The two Church amendments?

Mr. HELMS. Yes.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered.

CORRUPT OVERSEAS PAYMENTS BY U.S. BUSINESS ENTERPRISES

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of Calendar No. 973, S. 3664, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3664) to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such act to maintain accurate records, to prohibit certain bribes, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from hte Committee on Banking, Housing and Urban Affairs.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that Ken McLean, Robert Kuttner, and Howard Shuman be granted the privileges of the floor during the debate and vote on the pending bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, the bill before us this afternoon deals with a problem which troubles many Americans, the problem of bribery by multinational corporations abroad.

It is a very significant problem which has been recognized by all those who have responsibility, including the President of the United States, the Secretary of State, the Secretary of the Treasury, the committees of Congress, and many people in the business community. It is something which has been a very serious weakness of our free enterprise system.

It has been disclosed that there have been bribes paid by large American companies that have embarrassed foreign countries, that have resulted in great danger to governments in foreign countries, the danger that they may fall, and it has been a source of embarrassment and humiliation to many Americans who believe so strongly in our free enterprise system.

Mr. President, there is a broad consensus that the payment of bribes to influence business decisions corrodes the free enterprise system. Bribery short circuits the marketplace. Where bribes are paid, business is directed not to the most efficient producer but to the most corrupt. This misallocates resources and reduces economic efficiency. So our objective should be to end those bribes in the most effective way we can.

More importantly, bribery is simply unethical. It is counter to the moral expectations and values of the American public. It erodes public confidence in the integrity of the free market system. Bribery of foreign officials by some U.S. companies casts a shadow on all U.S. companies. It makes it harder for any American company to sell abroad when some of our most prominent and successful companies have engaged in that kind of activity.

It puts pressure on ethical enterprises to lower their standards and match corrupt payments, or risk losing business.

When bribery is exposed, it usually leads to sanctions both by the host government and the marketplace, against the offending company. The results have included cancellation of contracts, expropriations fines, lawsuits, and a loss of confidence in the company by investors.

Bribery of foreign officials by U.S. corporations also creates severe foreign policy problems. The revelations of improper payments invariably tends to embarrass friendly regimes and lowers the esteem for the United States among the foreign public. It lends credence to the worse suspicions sown by extreme nationalists or Marxists that American businesses operating in their country have a corrupting influence on their political systems. It increases the likelihood that when an angry citizenry demands reform, the target will be not only the corrupt local officials, but also the United States and U.S.-owned business.

Bribery by U.S. companies also undermines the foreign policy objective of the United States to promote democratically accountable governments and professionalized civil services in developing countries.

Mr. President, the question is, what is the committee recommending to the Senate of the United States to meet this problem? I might say this is a compromise bill, which was reported unanimously. Section 1 of the bill adopts the recommendations of the Securities and Exchange Commission. It requires reporting companies to create and to maintain accurate books and records.

It is essential that there be such a statute if we are to enforce the laws against bribery, and this is one of the urgent requirements recommended by the Commission.

Second, it requires internal accounting controls sufficient to assure that transactions will be executed in accordance with management's instructions, that transactions will be accurately recorded, that access to corporate assets is carefully controlled, and that the representations on company books will be compared at reasonable intervals with actual assets, and any discrepancies resolved.

The purpose of that provision, of course, is to make sure that the management of a company controls its assets, and that if people representing a company make a bribe payment, it is possible to hold the top officials of the company responsible. It is necessary to have this kind of law on the books to make sure that this responsibility is legally effective.

This section also makes it a crime for a reporting company to falsify books,

records, accounts, or documents, or to deceive an accountant in connection with an examination or audit.

The second section of the bill—and there are only three sections, and I have only a couple more paragraphs—applies to corporations subject to the jurisdiction of the SEC by virtue of the reporting requirements of the Securities Exchange Act of 1934. It applies the existing criminal penalties of the securities laws—up to 2 years imprisonment and a fine of up to $10,000—for payments, promises of payment, or authorization of payment of anything of value to any foreign official, political party, candidate for office, or intermediary, where there is a corrupt purpose. The corrupt purpose must be to induce the recipient to use his influence to direct business to any person, to influence legislation or regulations, or to fail to perform an official function in order to influence business decisions, legislation, or regulations, of a government.

The other section of the bill, section 3, applies the identical prohibitions and penalties provided by section 2 to any domestic business concern other than one subject to the jurisdiction of the SEC pursuant to section 2. Violations of the criminal prohibition under section 3 by persons not subject to SEC jurisdiction would be investigated and prosecuted by the Justice Department. Violations under section 2 would normally be investigated initially by the SEC, but referred for criminal prosecution to the Justice Department.

Mr. President, I have two more arguments I would like to make before I finish.

In the first place, the arguments against the legislation seemed to the committee—certainly they seemed to this Senator—to be unconvincing.

Most witnesses before the committee denounced bribery as an intolerable practice. Yet the argument is sometimes made that U.S. companies must pay bribes in order to compete with less scrupulous foreign competitors.

How about that? Do our firms really have to pay bribes to be effective abroad? As late as 1975, a survey of senior executives of major companies revealed that nearly half condoned bribery as necessary to do business in some parts of the world.

In reality, however, many of America's leading companies have never resorted to bribery. That is, in every industry where bribery has been present, the SEC found that there were American companies that were very successful, that paid no bribes at all. Incidentally, that is a most eloquent answer to the argument that we had better go along, or we will lose trade abroad. It seems to me it shows conclusively that it is not necesary to make these bribe payments. SEC Chairman Hills told the committee in testimony May 18:

> We find in every industry where bribes have been revealed that companies of equal size are proclaiming that they have no need to engage in such policies.

Indeed, there is substantial evidence that a refusal to bribe seldom results in a business advantage for foreign competitors. As Secretary Richardson observed on behalf of the Administration Task Force:

> In a multitude of questionable payments cases—especially those involving sales of military and comercial aircraft—payments have been made not to outcompete foreign competitors, but rather to gain a competitive edge over other U.S. manufacturers.

Mr. President, the most conspicuous example of bribes, or influence by payments, I should say, is by the Lockheed Corp. There were $22 million, or close to that, in payments that were considered questionable, and may have been considered as bribes. But from the testimony, it was obvious that Lockheed was competing, not with foreign competitors, but with other American companies. We produce more than 30 percent of the aircraft similar to those Lockheed produces, and that was their method of competition.

A strong antibribery law would help U.S. multinational companies resist corrupt demands, and would enhance the reputation of U.S. business abroad. The former chairman of Gulf Oil Co., Bob Dorsey, commented in testimony before the Multinationals Subcommittee of the Senate Foreign Relations Committee:

> . . . such a statute on our books would make it easier to resist the very intense pressures which are placed on us from time to time. If we could cite our law which says that we just may not do it, we would be in a better position to resist these pressures and refuse the requests.

That comes from a man who has had the hardest, toughest, and most direct kind of practical experience in this business. His recommendation to Congress is to pass a law outlawing bribery, and he says it will not make it harder for business, but better for business if we do so.

The argument has also been made that some foreign countries might resent American attempts to export our morality and impose American standards on transactions taking place in their countries. The fact is that virtually every country has its own laws against bribery, although some are not vigorously enforced. Given worldwide outcry against the corrupting influence of some U.S.-based multinationals on foreign governments, the committee believes that most countries would welcome a greater effort by the United States to discourage offensive conduct by U.S. companies, wherever their activities may take place.

It is interesting that the attorney general of the African Republic of Botswana, a small developing country in Africa, observed as follows:

> Certainly, no self-respecting African nation would consider U.S. legislation aimed at curbing corrupt practices of American transnational enterprises in their foreign host states to be "presumptous" or in any way "an interference". On the contrary, most Third World nations would appreciate such legislation. You see, developing countries have difficulties in discovering offenses committed by U.S. corporations in so far as their bribing and corrupting of local government officials . . . Why do you think all of these disclosures are coming out of Washington and, not out of the host countries? On this particular issue, most Third World countries would want to cooperate to the fullest extent possible, with the U.S. and other home countries to make sure that the offending transactional enterprise is punished. Another result of the U.S. adopting such legislation is that the Third World will acquire a healthier respect for the United States and its transnational enterprises.

Mr. President, we are not doing a disservice. We are doing a great service to other countries by prohibiting bribes by our companies abroad.

There is no way that another country can gain if they acquire products from this country through bribery. What that means, of course, is the airplane or the tank that is bought, or the other product that is purchased is an inferior product; otherwise, the bribe would not be necessary. Either it is inferior or the price is higher. The reason the bribe is necessary is to sell the product.

So it is obviously not only in the interest of this country, not only in the interest, as I pointed out in some detail of businesses, but it is in the clear interest of the foreign countries involved, and they have told us that.

The concern has also been raised that criminal sanctions against an illegal act which takes place at least in part outside the United States, even if desirable, may be unenforceable or unconstitutional. It is a settled question of international law, of course, that a State may regulate the conduct of its citizens overseas where such conduct has consequences domestically.

There are ample legal precedents for the prosecution of criminal conduc overseas, where the illegal act is mitted by a U.S. citizen or national a U.S. organized or controlled compan where there is a nexus between that act and acts carried out within the United States, or where the act has consequences in the United States. Examples include securities fraud, violations of the Trading With the Enemy Act, and certain antitrust violations. The report of the committee includes a legal memorandum on that point. Moreover, in the current SEC investigations of violations of the securities laws involving failure to disclose material payments, the SEC has referred cases to the Justice Department for prosecution where the alleged criminal violation involved failure to report an overseas payment.

The committee also notes that in most cases investigated by the SEC to date, investigators were able to uncover adequate evidence of overseas payments by subpenaing records, and/or interviewing witnesses with knowledge of such payments, available in the United States. Furthermore, ethical employees or competitors are often a source of information on bribes paid overseas. All of these sources will continue to be available in the prosecution of bribery cases.

Finally, while the committee recognizes that the Securities and Exchange Commission has diligently sought to enforce the securities laws provisions requiring corporate reports to disclose "material" payments, the concerns raised by the disclosure of corrupt foreign payments require a national policy against corporate bribery that transcends the

narrower objective of [illegible] closing material information to investors.

There is one more argument I wish to make, Mr. President, before I yield the floor.

I fully recognize that the proposed law will not reach all corrupt payments overseas. For example, sections 2 and 3 of the bill that is before the Senate now would not permit prosecution of a foreign national who paid a bribe overseas acting entirely on his own initiative.

The committee notes, however, that in the majority of bribery cases investigated by the SEC, some responsible official or employee of the U.S. parent company had knowledge of the bribery and approved the practice. Under the bill as reported, such employees could be prosecuted. The concepts of aiding and abetting and joint participation in would apply to a violation under this bill in the same manner in which they have applied in both SEC actions and in private actions brought under the securities laws generally.

Furthermore, any U.S. corporation subject to the accounting requirements of section 1 which made a practice of "looking the other way" in order to be able to raise the defense that they were ignorant of bribes initiated by a foreign subsidiary, could be in violation of new subparagraph (b)(2)(B) requiring issuers to devise and maintain adequate accounting controls. Under section 1, no off-the-books account or fund could lawfully be maintained, either by the U.S. parent or by its foreign subsidiary, and no improper payment could be lawfully disguised.

The committe expects that the prohibitions contained in section 2 of the bill as reported will complement the accounting provisions of section 1, which were recommended by both the SEC and the Richardson task force. The committee took note of the SEC's oft-repeated conclusion that "virtually all questionable payment matters have involved the deliberate falsification of corporate books or records, or the maintenance of inaccurate or inadequate books and records, which among other things, prevent these practices from coming to the attention of the company's auditors, outside directors, and shareholders."

The requirement to maintain accurate books, records, and management controls and the prohibition against falsifying such records or deceiving an auditor will go a long way toward eliminating improper payments, which—almost by definition—require concealment. Taken in combination with the criminal prohibition against bribery, the accounting provisions should be adequate to the task of deterring corrupt payments even where transgressors take steps to evade the intent of the law.

To sum up, Mr. President, this is a compromise bill. The committee narrowed the definition of "bribery." The disclosure provision was dropped. I objected to that, and I hope on the floor we can amend the bill to accept an amendment which I understand Senator CHURCH will offer that will provide disclosure. I think that will be a substantial bill.

The bill has support in its present form of the SEC. It was a bipartisan compromise reported to the Senate without dissent. Both Democrats and Republicans on the committee support the bill.

The bill simply makes it a crime to bribe a foreign official to obtain business or influence legislation. It must be a corrupt purpose. It makes it a crime to falsify company books.

Other nations need to have confidence that U.S.-based firms are not corrupting foreign governments.

We have the conspicuous and tragic example of the Japanese Lockheed case. Bribery, by a few firms like Lockheed, unfairly tarnishes the honest U.S. companies and puts pressures on the honest companies to bribe.

The Securities and Exchange Commission told us many bribes paid by U.S. companies were paid to get business away from other U.S. companies.

It is enforceable. Most existing SEC cases were brought by using records and witnesses available to the United States.

Mr. President, I yield the floor, and I am hopeful we can finish this bill tonight.

If the Senator from Texas wants to agree to any time limitation after debate has run a while, I will be happy to do that. If not, we will just see what happens.

Mr. TOWER. Mr. President, in response to the Senator from Wisconsin, I would be perfectly willing to agree on controlled time if I could know what amendments we are likely to consider. I have some concerns myself about the Church amendment.

As to the bill in its present form, I am prepared to go ahead and act on it quickly, but it is the uncertainty on amendments that causes me to be reluctant. So I will not agree to a controlled time at this point.

As we have seen this past year, improper payments to foreign government officials or their intermediaries is indeed a serious problem and one which is not taken lightly by responsible governments. It is also a problem more akin to a disease which deeply troubles proponents of our free enterprise system. We have built an economy in the United States based on vigorous, honest competition where price, quality, and service commingle with demand and supply to regulate economic transactions. Bribery poisons this system by destroying the organisms of mutual trust and voluntary cooperation so essential to the free flow of commerce. This ethical decay must be stopped.

Bribes, payoffs, or kickbacks are also unproductive and inefficient; they increase the costs of doing business while providing little or no tangible benefits. There are those that contend that bribery is a necessary part of doing business. To those individuals I defer to Benjamin Franklin who once wryly remarked:

If the rascals knew the advantage of virtue, they would become honest men out of rascality.

[illegible] committee has approached this issue and has attempted to deal with it through S. 3664. This legislation essentially contains recommendations made by the Securities and Exchange Commission to improve corporate accountability and a narrowly defined prohibition against the payment of overseas bribes by U.S. business concerns.

Though I strongly support the intent of the legislation and believe that the direct-prohibition approach contained in S. 3664 is superior to a disclosure-based approach, I am concerned about the scant attention given to the first section of the proposal.

The first section contains the recommendations of the SEC. During the hearing and subsequently during the markup session we in the committee had the impression that the measures proposed by the Commission would simply make explicit what was implicit in the statutes. I understood that the proposal would not expand the authority of the SEC nor distort the existing system of corporate self-regulation. Since the legislation was favorably reported on June 22, 1976, serious questions have been raised as to the nature of the proposals contained in section 1.

It is unfortunate that the legislation was considered in such haste. The SEC proposal was introduced as a separate bill, S. 3418, on May 12, 1976, and hearings were then held on May 18. At that time only the Chairman and the Commissioners presented testimony; there were no private witnesses.

Mr. President, section 1 of this legislation simply has not been thoughtfully considered. The requirement that corporations devise an adequate system of internal accounting controls though laudatory in concept may prove troublesome in its implementation. It is also questionable as to whether this would significantly contribute to resolving the bribery dilemma.

Questions have also been raised as to the advisability of making it a crime to orally lie to or to mislead an auditor. It is contended that the actual effect may be to reduce the effectiveness of the independent auditing process.

I wish to make it clear that I do not oppose the intent of section 1 and I may not oppose it in its present form. I only wish to state that there are issues which have not been adequately resolved.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that Mr. William Weber, of the staff of the Committee on Banking, Housing and Urban Affairs, have the privilege of the floor during the debate and vote on this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2283

Mr. CHURCH. Mr. President, I send to the desk an amendment to the pending bill.

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from Idaho (Mr. CHURCH) proposes an amendment:

The amendment is as follows:

At the end of the bill add the following:

REPORTING REQUIREMENTS

SEC. 4. Section 13 of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following new subsection:

"(g)(1) Every issuer of a security registered pursuant to section 12 of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the proper protection of investors and to insure fair dealing in the security, periodic disclosure statements containing such information and documents (and such copies thereof), as the Commission shall deem necessary or appropriate to provide a complete accounting of any contribution, payment, gift, commission, or thing of value, as defined by the Commission, not already reported pursuant to provisions of sections 22 or 38 of the Arms Export Control Act, paid or furnished by the issuer—

"(A) to any agent, consultant or like individual retained by the issuer to perform services outside the United States on behalf of the issuer in promoting, selling, or soliciting or securing indications of interest in any product or service produced, sold, distributed, or performed by the issuer;

"(B) in connection with any direct or indirect political contribution by that issuer to any foreign government; and

"(C) in connection with any direct or indirect payment or gift by the issuer to an official or employee of a foreign government.

"(2) Each statement required to be filed under paragraph (1) shall include—

"(A) the name and address of each person who made any such contribution, payment, gift, or who paid such commission or furnished such thing of value;

"(B) the date and amount of any such contribution, payment, gift, commission, or thing of value;

"(C) the name and address of each recipient or beneficiary, whether direct or indirect, of each such contribution, payment, gift, commission or thing of value;

"(D) a description of the purpose for which each such contribution, payment, gift, commission or thing of value was furnished; and

"(E) such other information as the Commission may require.

"(3) Each such issuer shall maintain adequate books and records relating to contributions, payments, gifts, commissions, or things of value referred to in paragraph (1) as the commission may by regulation require for a period of not less than five years.

"(4) Each such issuer shall require, as a condition of employment or retention, that each person retained by the issuer within the meaning of paragraph (1)(A)—

"(A) maintain, for not less than five years, copies of books and records in the United States; or

"(B) make available upon request by the issuer books and records,

pertaining to such issuer and indicating the ultimate recipient of any contribution, payment, gift, commission, or other thing of value furnished to such person or to or through any other person.

"(5) Each statement filed under this subsection shall be made available for examination and copying by the public, except to the extent the President determines that the disclosure of information contained in a particular statement will severely impair the conduct of the United States foreign policy, and transmits to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report stating that such a determination has been made and summarizing the information which is subject to the determination. If such a determination is made, a notation to that effect shall be entered in that part of the statement which is made available to the public.

"(6) As used in this subsection the term 'foreign government' means government of a country other than the United States or of any political subdiyision thereof, any agency or instrumentality of such government or subdivision, and any official of a political party, political party, or political association within a foreign country."

CIVIL LIABILITY

SEC. 5. (a) Except as provided in subsection (b), any person who makes any payment prohibited by section 3 of this Act, section 30A of the Securities Exchange Act of 1934, or section 201 of title 18, United States Code, and thereby causes a competitor to sustain actual damages is liable to such competitor in an amount equal to the sum of not more than three times the actual damages sustained by such competitor, plus the costs of the action and reasonable attorney's fees, as determined by the court.

(b) A person has no liability in an action under this section if he can show by a preponderance of the evidence that the plaintiff in such action also made a payment in violation of any such section.

(c) Any action under this section may be brought in any United States district court or in any court of competent jurisdiction within two years from the date of the occurence of the violation.

FOREIGN POLICY ANALYSIS

SEC. 6. (a) The Secretary of State (hereinafter referred to as the "Secretary") shall provide annually to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report containing a comprehensive review and foreign policy analysis, by country, of contributions, payments, gifts, commissions, or things of value, as defined by the Commission, paid or furnished by domestic concerns (as defined in section 3(c)(1))—

(1) to any agent, consultant or like individual retained by such a concern to perform services outside the United States on behalf of the concern in promoting, selling, or soliciting or securing indications of interest in, any product or service produced, sold, distributed, or performed by the concern;

(2) in connection with any direct or indirect political contribution by that concern to any foreign government; and

(3) in connection with any direct or indirect payment or gift by the concern to an official or employee of a foreign government

(b) The report required by subsection (a) shall include—

(1) the aggregate value of such contributions, payments, gifts, commissions, or things of value, if the total amount equals or exceeds a value determined by the Secretary as having significant foreign policy consequences, an identification of the companies involved, and an analysis of foreign policy implications;

(2) a description and analysis of specific transactions the effects of which are directly or indirectly detrimental to the interests of the United States;

(3) a statement of whether the Department of State was aware of such contributions, payments, gifts, commissions, or things of value prior to their making; and

(4) such other information as the Secretary deems necessary to provide a complete analysis of the foreign policy implications for the United States of the transactions involved.

(c) The Secretary shall have access to such information in the custody of the Securities and Exchange Commission as he determines is relevant to the formulation of this report. Further, the Secretary may consult with the Securities and Exchange Commission in order to formulate additional rules and regulations for promulgation by the Securities and Exchange Commission designed to obtain information for the Secretary's report. The Secretary may also request that the Securities and Exchange Commission seek supplementary information to enable the Secretary to provide as complete a report as possible.

(d) Nothing shall prevent the Secretary from making more frequent reports or briefings, partial or complete, when deemed necessary by either the Secretary or the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House.

INTERNATIONAL EFFORTS

SEC. 7. (a) All efforts should be made by the President to obtain international agreements in as many forums as appropriate concerning the reporting and exchange of this information and the establishment of international standards and codes of conduct for the operations of business concerns.

(b) The President shall make all efforts to obtain international rules and regulations for international government procurement and sales.

(c) Not later than 18 months after the date of the enactment of this Act, the Presidetn shall submit to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report on all efforts undertaken pursuant to subsections (a) and (b) of this section.

Mr. CHURCH. Mr. President, first of all, I wish to amend the pending bill, S. 3664, which undertakes to make bribes paid overseas by U.S.-based corporations illegal under U.S. law.

For more than a year and a half, the subcommittee on multinational corporations, which I chair, has held extensive hearings on political contributions paid by U.S.-based corporations to persons in other countries. The record of these investigations is well known. Lockheed, Northrop, Exxon, Gulf, and Mobil are just some of the corporations that have made questionable payments abroad.

The Securities and Exchange Commission has uncovered many more such payments. The payments were virtually never made directly to the ultimate, intended recipient. Double bookkeeping, off-the-books accounts, Swiss bank ac-

counts, dummy or shell corporations set up in Switzerland or Lichenstein, numerous agents or intermediaries whose existence is often kept secret, code names and code books, all hinder discovery of the direct payoff and obfuscate understanding of what is really at stake.

These practices have extremely serious consequences for both the conduct of U.S. foreign policy and the reception U.S. business receives abroad. Specifically, we found that the Lockheed Corp. had been funding, as its secret agent, Yoshio Kodama, a leader of an ultramilitarist faction in Japan whose politics the U.S. Government has opposed since World War II. In addition, my subcommittee revealed that bribes had been paid by Lockheed to highly placed ministers in the Japanese, Dutch, and Italian Governments; Northrop Corp. had made payments through its agent intended for two Saudi Arabian generals to facilitate the sales of its aircraft; Exxon, Mobil, Gulf, and Socal, among others, had joined to make contributions to Italian political parties in return for economic benefits.

This is not to say that only the corporations are at fault. For every giver there is a taker, and often the initiative comes from the foreign government official. Indeed, in some cases the initiative amounted to extortion. But too often the corporate response has been passive acquiescence, a shrug of the shoulders, and passing the added cost on to the consumer.

Congress has recognized the seriousness of this problem already. Both Houses have passed, and the President has signed into law, an amendment offered by myself and the Senator from Illinois (Mr. PERCY) requiring that corporations selling military equipment overseas report agents' fees and other payments to the U.S. Government. The information that must be reported includes the amounts and kinds of payments, and the names of sales agents and other persons receiving the payments. Recordkeeping is required to ensure proper reporting. The aim is to strip away the layers of agents, dummy corporations, and other smokescreens to determine exactly who is the ultimate recipient.

To address the problem more comprehensively, Senators CLARK, PEARSON, and myself introduced S. 3379, focusing on disclosure of fees and payments to insure that information with respect to questionable payments by all of our corporations was routinely available.

Senator PROXMIRE's bill makes overseas bribes illegal; it is my understanding that he welcomes disclosure and considers it complementary to his approach.

I am, therefore, introducing this amendment to Senator PROXMIRE's bill. The first section insures that the Securities and Exchange Commission will collect payments information parallel to that collected on foreign military sales; the focus again will be on determining the ultimate recipient. The information will be public unless the President finds that its revelation would severely impair the conduct of U.S. foreign policy. The second section creates a private right of action for those corporations who can show that they lost business as a result of a competitor's paying bribes. Our investigations have uncovered instances of competition between U.S.-based firms where payoffs have been used with abandon; the Lockheed sale of the L1011 in Japan against competition by Boeing and McDonnell Douglas is a prime example. This provision would allow the private sector to police itself—an important concept as we face burgeoning government bureaucracies.

The third section requires that the Department of State analyze the foreign policy implications of these payments and report on its findings to Congress. The final paragraphs urge the President to take appropriate international steps to bring bribery under control.

The package complements and strengthens Senator PROXMIRE's antibribery bill. It provides the reporting necessary to identify those payments, many of which may not be necessarily illegal but could have serious consequences for our foreign policy, while establishing mechanisms that allow the private sector to police itself. The combined approaches can provide the most effective remedy to the problem.

Mr. President, I commend Senator PROXMIRE and Senator TOWER and the other members of the committee for the excellent work they have done on the problem of overseas bribery. My purpose in offering this amendment is simply to supplement the bill's provision, which would make bribery illegal overseas, as it is in the United States. It would also require, should the amendment be adopted, the kind of disclosure provisions that we have already written into the military arms sales bill. A wider application of the disclosure provision is, in my judgment, necessary to make this bill do the job that I know Senator PROXMIRE wishes it to do.

Mr. PROXMIRE. Will the Senator from Idaho yield?

Mr. CHURCH. Yes.

Mr. PROXMIRE. As the Senator knows, I strongly support his proposal. I think it is a logical and sensible supplement. We had some of the same kind of measures in the bill as I proposed it in the committee. I want very much to preserve what the Senator from Idaho has developed so very well in the Committee on Foreign Relations. With a great deal of effort and a considerable amount of attention and hearings, he has undoubtedly made the biggest contribution of any Member of the Senate to an understanding of the abuse and the serious consequences of the abuse on American business, American trade, the American image abroad, and the need to act on it.

As I understand it, the Senator has proposed three things: No. 1, disclosure, not simply of bribes, but, in addition, of those payments that are not reached by our bill; that is, not made, perhaps, to an official of the Government, but to a private citizen who, in turn, might spread the money around. This would seem to be a possible loophole in the bill as it is presently presented, which would be plugged by section 1. Is that correct?

Mr. CHURCH. Yes, the Senator is correct. The disclosure provision goes to all commissions and fees paid to agents in connection with American sales abroad. Many of those fees and commissions may be perfectly legitimate. If they are, there will be some reasonable relationship between the amount paid to the agent and the sale that is sought.

On the other hand, since the law will require the disclosure of all such fees and commissions, if a company is, in fact, making large amounts of money available an an agent overseas, the disclosure requirement will alert the Government as to the possibility, the strong possibility, that the money is being improperly used to bribe foreign government agents. So this disclosure supplements the objective of the bill, which is to "illegalize" bribery abroad in the future, just as it has long been a crime when it takes place within the United States.

Mr. PROXMIRE. As I understand it, the second section of the Church amendment provides for private action so that a firm which is injured by the bribe—that is, they lose a sale, they lose the opportunity to make a profitable sale and do business because their competition is engaging in illegal bribery—can take private action which would have the desirable effect, No. 1, of dissuading such bribes; No. 2, of disclosing and enforcing prohibition of bribes in effect; No. 3, providing the kind of effective competition which all of us believe in. Is that correct?

Mr. CHURCH. Yes, the Senator is absolutely correct in his statement. We have found that, in a number of cases, monstrously unfair competition is being practiced by one American company against another. The honest company that tries to avoid under-the-table payments of millions of dollars to foreign officials wonders why it lost the sale, only to discover, months or years later, that it was because its competitor had paid off certain foreign officials to obtain the sale. Therefore, when that discovery is made, as it often is—and that has been the mea of my subcommittee's work for the last few months—the aggrieved company would have a civil cause of action for the damages it could prove resulted from the bribery.

Mr. PROXMIRE. The only other section of the amendment would require annual reports by the Department of State of the problem that these illegal and improper payments represent as far as our foreign policy is concerned?

Mr. CHURCH. The third paragraph imposes an obligation on the Department of State to make reports to Congress in connection with the bribery problem. These reports are to be made so that Congress can be kept current on the progress being made in tempering these practices and reducing them.

Mr. PROXMIRE. Is there a reaction from the Department of State to the proposal to make reports?

Mr. CHURCH. The only reaction that I know of from the administration on this issue has taken the form of the administration's own proposal. That is, to the best of my knowledge, the case.

The other provision in the final paragraphs of the amendment would simply urge the President to undertake appro-

priate steps to see that we have some kind of operation. That way we are not taking unilateral action in cleaning up the practices of our own companies while other governments look the other way.

Mr. PROXMIRE. How much of a burden would this represent on the part of the State Department? How difficult would it be for them to enforce this?

Mr. CHURCH. I think there is no particular problem because the requirement is clear. It has already been adopted in the arms sales bill, and I knew of no objection on the part of the Department to the bookkeeping that would be involved in that disclosure requirement. This amendment closely follows the amendment that was already adopted in Congress as part of the arms sales bill.

Mr. PROXMIRE. Mr. President, I thank the Senator. Once again I reiterate my enthusiastic support for his amendment.

Mr. TOWER. Mr. President, I have only seen the amendment a few minutes ago. I have been going through it and trying to analyze it as best I can without benefit of any counsel.

I have some concerns with it, and I think the administration might have some concerns with it.

I note that we have held no hearings on this in the Banking Committee. We have held hearings on a similar bill, S. 3379, and there were just a few people who commented on it or testified on it, really only members of the Commission. There were no representatives from private industry or from the administration who testified on this matter, and I think it could have some far-reaching implications not just for American businesses that are doing business abroad but also it could have some foreign policy implications. It could have some domestic political impact on friendly countries—perhaps even in countries that are not so friendly but, at least, are not hostile.

So I think this would be a matter that we would want to consider very carefully. I hope we can hold hearings on this as a separate measure rather than go into it as an amendment to this bill.

There has been testimony to the effect that outright prohibition by the United States of the practice of bribery, criminal prohibition, is the strongest deterrent we could have, and that is contained in the bill before us. Too, it is the strongest possible indication of U.S. policy. This provision for wide disclosure, with no specific definition of what shall be disclosed, I think, has a potential for great mischief-making.

I note that what is required here is an accounting of any contribution, payment, gift, commission, or thing of value as defined by the Commission. Now, it could be a legitimate and legal contribution or payment. It could be the kind of gift that very often businesses give to their customers at Christmastime, that kind of thing, which is not really considered to be bribery. It is considered to be good public relations. Or things of value—well, things of value could be anything.

I think what this could do is force disclosure of legitimate payments or commissions and, perhaps, cast them in an unfavorable light with a clear suggestion that, perhaps, there is something wrong with them. I think it is an invitation for witchhunting.

I might be convinced otherwise, but, at the moment, I am not convinced and, therefore, I hope that we do not act on this measure right now.

There is another provision that provides:

> Each statement filed under this subsection shall be made available for examination and copying by the public, except to the extent the President determines that the disclosure of information contained in a particular statement will severely impair the conduct of the United States foreign policy, and transmits to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report stating that such a determination has been made and summarizing the information which is subject to the determination.

Here is a further provision that I am somewhat at a loss about, which reads as follows:

> If such a determination is made, a notation to that effect shall be entered in that part of the statement which is made available to the public.

What that sounds like to me is, even if it should impact adversely on the conduct of American foreign policy, the committee could go ahead and release the statement with simply a notation that the administration has noted it is harmful to the conduct of American foreign policy.

It does not seem to me to afford any protection of any kind to the administration in an effort to prevent the disclosure of information that does adversely impact, perhaps, on a delicate international negotiation or a delicate relationship of some kind.

I hope we could hold hearings on this proposal and hear more than the witnesses we have had on a similar proposal, which consisted only of the members of the Securities and Exchange Commission.

So I would plead with my distinguished chairman to use his good offices in seeing if we cannot, perhaps, agree to take this to hearing but not act on it on the floor today. This is too important a matter, and it has too many implications, for us to legislate in a few minutes here on the Senate floor, I think, on this matter.

Cetrainly I do not disagree with the intent of the Senator from Idaho. I know the Senator from Idaho is well-motivated on this, and I think we would all like to see these practices stopped, the practices that are engaged in not only by American companies, I might add, but by foreign companies as well. I will not name them, but we know who they are. As a matter of fact, there was a writeup in the Washington Post this morning of a French concern that has been engaged in this kind of thing.

I think the best way to stop it will not even be this kind of unilateral legislation that we are probably going to pass here today, S. 3664 which, as the chairman of the committee pointed out, we have all agreed to. The only way to deter it, I think, is going to be through some international convention that all the major industrial nations sign, something that has the force of international law because, unilaterally by ourselves, we are not going to stop it.

MAINTENANCE OF COMMON TRUST FUND BY AFFILIATED BANKS

Mr. LONG. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. TOWER. I yield to the Senator from Louisiana.

Mr. LONG. Mr. President, as of tonight the withholding tax is scheduled to go up because we need a few more days to act on the bill extending the withholding rates. So, to prevent this tax increase, we should pass this matter over to the House now so that the House can get it to the President's desk tonight.

I ask unanimous consent, Mr. President, that the pending matter may be temporarily laid aside long enough to consider Calendar No. 1116 to which I propose an amendment as to the withholding rates.

The PRESIDING OFFICER (Mr. STEVENS). Is there objection? The Chair hears none, and it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

> Calendar No. 1116, H.R. 5071, a bill to amend section 584 of the Internal Revenue Code of 1954 with respect to the treatment of affiliated banks for purposes of the common trust fund provisions of such Code.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 459

Mr. LONG. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

> The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment No. 459:
>
> At the appropriate place, insert the following new section:
>
> SEC. . WITHHOLDING; ESTIMATED TAX PAYMENTS
>
> (a) WITHHOLDING.—
>
> (1) IN GENERAL.—Section 402(a) of the Internal Revenue Code of 1954 (relating to income tax collected at source) is amended by striking out "September 15, 1976" and inserting in lieu thereof "October 1, 1976".
>
> (2) TECHNICAL AMENDMENT.—Section 209(c) of the Tax Reduction Act of 1975 is amended by striking out "September 15, 1976" and inserting in lieu thereof "October 1, 1976".
>
> (b) ESTIMATED TAX PAYMENTS BY INDIVIDUAL.—Section 6153(g) of such Code (relating to installment payments of estimated income by individuals) is amended by striking out "September 15, 1976" and inserting in lieu thereof "October 1, 1976".
>
> (c) ESTIMATED TAX PAYMENTS BY CORPORATIONS.—Section 6154(h) of such Code (relating to installment payments of estimated income by corporations) is amended by striking out "September 15, 1976" and inserting in lieu thereof "October 1, 1976".

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. LONG. In just a second. Mr. President, this bill, regarding the maintenance of a common trust fund by affiliated banks, passed the House by a unanimous

vote, and it was unanimously agreed to in the Senate. I am not aware of any objection to it. The significant thing is the amendment would just continue the withholding tax rates until the end of this month and, of course, by that time we will have had, I hope we would have passed, the big tax bill we have been debating in the Senate.

I yield to the Senator.

Mr. ALLEN. I concur wholeheartedly with what the Senator is doing, and I am certainly not going to object by a prolonged discussion, but I would like to inquire if possible there are other miscellaneous bills that have been through the Ways and Means Committee and the Finance Committee that may be on the calendar or others that will come to the calendar before adjournment that we might have an opportunity to offer innocuous amendments to of a miscellaneous nature. Would the Senator assure me that is the case?

Mr. LONG. I can assure the Senator there is a hold on every revenue bill that is on the calendar. Senators have that for various reasons. Some want to offer amendments. Some, perhaps, want to inquire in greater detail into the bill. There may be something someone else might want, an amendment they might not want to agree to.

But on my part, I can assure the Senator: I cannot guarantee, as if I had the power, to do so. The Senator has the right to offer an amendment.

Mr. ALLEN. Will the Senator try to recall to let the Senator from Alabama know if he is going to bring a bill up so that he might have an opportunity?

Mr. LONG. Yes; I would be happy to inform the Senator.

Mr. ALLEN. I thank the Senator.

The PRESIDING OFFICER (Mr. STEVENS). The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 5071) was read the third time, and passed.

Mr. LONG. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

QUORUM CALL

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CORRUPT OVERSEAS PAYMENTS BY U.S. BUSINESS ENTERPRISES

The Senate continued with the consideration of the bill (S. 3664) to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such act to maintain accurate records, to prohibit certain bribes, and for other purposes.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the Church amendment.

The PRESIDING OFFICER (Mr. CURTIS). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MANSFIELD. I ask unanimous consent that the vote occur at 10 minutes to 5, the time to be equally divided.

Mr. TOWER. I object.

Mr. MANSFIELD. How much time do you want?

Mr. TOWER. I am not prepared to accept a limitation right now.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. FORD). Without objection, it is so ordered.

ORDER FOR ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask uanimous consent that when the Senate completes its business today it stand in adjournment until 9:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL ORDERS FOR WEDNESDAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that after the joint leaders have been recognized Senators BIDEN and CRANSTON be recognized for not to exceed 10 minutes each, Senator PROXMIRE for not to exceed 15 minutes, Senator STEVENSON and Senator MORGAN not to exceed 10 minutes, Senator MCGOVERN and Senator BAYH not to exceed 15 minutes; that at the conclusion of special orders, the Church amendment be laid before the Senate; that there be not to exceed 1 hour of debate on the Church amendment, to be equally divided between the Senator from Idaho (Mr. CHURCH) and the Senator from Texas (Mr. TOWER); that at the end of that time there be a vote on the Church amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

CORRUPT OVERSEAS PAYMENTS BY U.S. BUSINESS ENTERPRISES

The Senate continued with the consideration of the bill (S. 3664) to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such act to maintain accurate records, to prohibit certain bribes, and for other purposes.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial which appeared in the Washington Post on August 21, 1976, endorsing my amendment, and an excellent letter written by the chairman of the Committee on Banking, Housing and Urban Affairs, Mr. PROXMIRE, in which he accents in principle the amendment as a welcome addition to the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 21, 1976]

MR. TANAKA AND LOCKHEED

First the Japanese government pitched its former premier, Kakuei Tanaka, into jail for three weeks in its investigation into the Lockheed case. Then it indicted him and released him on bail—the highest bail ever set by a Japanese court on a bribery charge. Japan is hardly unique in the excessive amounts of money drawn into its political life. But it is hard to think of any other modern democracy that has treated a man of equal rank with such dramatic severity. Even Mr. Agnew was never locked up.

As the prosecution of Mr. Tanaka proceeds, it is useful for Americans to remember that it takes two to commit bribery—and the money in the Lockheed case came originally from the United States. Both Japan and the United States will hold elections this fall. In both countries, the question of international bribery is being raised at a time when the politicians are forced to pay attention.

The drastic character of the Tanaka prosecution is related to the intense rivalries among the factions of the Liberal Democratic Party that has governed Japan for almost three decades. When Mr. Tanaka was forced to resign as premier in 1974, as a result of earlier and lesser scandals, he continued in control of one of the party's largest factions. He had always been a spectacularly successful fund-raiser, and the influence that he derived from the flow of contributions continued undiminished. He remained the most powerful man in the party, and he is not the forgiving sort.

His successor as premier, Takeo Miki, discovered last winter that either he would have to prosecute Mr. Tanaka or Mr. Tanaka would devour him. But Mr. Tanaka began to get help from some of the other party leaders—men who had had no part in the Lockheed affair but who apparently feared the effects of a thorough investigation on the party structure. In May, several of the factions joined in an attempt to oust Mr. Miki. Instead of going quietly, he hit back. He declared that he would not leave office until the Lockheed scandal had been resolved. A surge of public support sustained the premier in power and two months later Mr. Tanaka went to jail. This week he was formally charged with taking $1.7 million in bribes to persuade a domestic Japanese airline to buy 21 Lockheed Tristars.

It would have been unfortunate enough to have any American corporation involved in this kind of transaction. But Lockheed is not considered, in other countries, to be just another American company. It is the largest U.S. defense contractor, and it owes its existence to federally guaranteed loans. It is seen abroad as almost an arm of the U.S. government. Its misdeeds, thus, have done proportionately great damage to this country and its reputation.

What does the United States propose to do to prevent a repetition? Last spring Congress added a line to the military aid bill requiring defense contractors to report all foreign fees and commissions to the State Department. That is a beginning, but a very modest one. In the Japanese case, after all, Lockheed was selling civilian aircraft.

Sen. William Proxmire (D-Wis.) has called for criminal penalties for bribing foreign

officials. The Ford administration, instead, has proposed a rule of disclosure of all fees paid by American companies to promote foreign sales. At first glance the disclosure rule might seem weak, but it promises to work more effectively in practice than Sen. Proxmire's criminal sanctions. Jimmy Carter, the Democratic candidate for President, derided the administration's position the other day as "a proposal to allow corporations to engage in bribery so long as they report such illegal transactions to the Department of Commerce." But Mr. Carter hasn't yet got a good grip on the issue. International bribery is typically carried on through layers of subsidiaries and intermediaries; it's very difficult to prove criminal intent at the point at which the money leaves the United States. If a transaction takes place in Japan, it's up to the Japanese courts to decide what's illegal.

But there is one gaping defect in the administration's disclosure plan. Payments would be made public only after a delay of one full year. Why give a year's grace? The best solution comes from Sen. Frank Church, whose Subcommittee on Multinational Corporations was mainly responsible for bringing the Lockheed case to light. Sen. Church recommends full and immediate public disclosure of all fees paid on foreign sales, except for the rare exception that would severely impair national security.

Under the Church requirement, Japanese prosecutors would have been automatically alerted to the inexplicably large fees that were being paid by Lockheed on the Tristar sale. Only the Japanese government could pursue the matter beyond that point. And as Mr. Miki is demonstrating, the Japanese government is quite prepared to follow the chain to its end.

There is one heartening aspect to the squalid affair of the Tristar bribes. In both Japan and the United States, voters have been outraged and the search for effective sanctions has become a campaign issue. An accusation of bribery has suddenly become unprecedentedly dangerous to a politician—as Mr. Tanaka can testify.

[From the Washington Post, Sept. 7, 1976]

DEALING WITH CORPORATE BRIBERY

Your otherwise perceptive August 21 editorial on corporate bribery assumes erroneously that a criminal prohibition of foreign bribes versus a requirement that foreign payments be disclosed are mutually exclusive approaches to the overseas bribery problem and that disclosure is the more effective approach. Actually, both approaches are compatible and reinforce one another.

A disclosure approach can be particularly effective in deterring foreign payments of doubtful propriety but which do not meet the necessarily narrow definition of an outright bribe; for example, an abnormally large sales commission payment to the son of a foreign procurement official.

On the other hand, a direct criminal prohibition can be more effective in deterring foreign payments that are clearly bribes in the eyes of the company contemplating the payment. A disclosure approach, by itself, would not necessarily discourage the payment of bribes in those cases where a company thought that it could disguise the true nature of the payment while still satisfying its legal disclosure obligations.

For example, a company might pay a fee to a foreign marketing consultant with an implicit understanding that a portion of the payment will be channelled to a foreign official in order to obtain a contract. The disclosures would appear legitimate while concealing the true purposes of the transaction.

It could be argued that a company that failed to indicate the true purpose of a foreign payment would be in violation of the disclosure statute and thus subject to civil and possibly criminal penalties. However, in order to bring such an action, the appropriate enforcement agency would have to show what the true purpose of the payment actually was. Thus, all of the evidence needed to enforce a direct prohibition of foreign bribes would also be needed for the effective enforcement of a disclosure statute.

After carefully considering the problem, the Senate Banking Committee concluded that a direct criminal prohibition would be no more difficult to enforce than a disclosure statute. A direct prohibition also has the advantage of clearly and unequivocally declaring that foreign bribes are contrary to U.S. policy. Accordingly, an immediate consensus was formed on the committee in favor of a criminal prohibition of foreign bribes.

The committee also considered the need for a complementary disclosure program to discourage payments that are potentially improper but not necessarily illegal. There was not a consensus on the committee that the benefits from a disclosure approach would outweigh the cost of compliance imposed on U.S. companies. The committee therefore decided to defer action on the disclosure approach until better information can be obtained.

In the meantime, there is no reason why the Senate should not proceed to consider the bill prohibiting foreign bribes as reported by the Banking Committee on July 2. A complementary disclosure program can always be considered as a floor amendment or passed in the form of a separate bill at a later date. The important thing is to take some action this year while the foreign payoff issue is still fresh in the public mind.

WILLIAM PROXMIRE,
Chairman, Senate Committee on Banking, Housing and Urban Affairs.

The PRESIDING OFFICER. Who yields time?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE MEETINGS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Public Works be authorized to meet on September 15 to consider the Water Resources Development Act of 1976 and that the Subcommittee on Federal Spending Practices of the Committee on Government Operations be authorized to meet on September 29 concerning the Army's main tank program. This has been cleared on both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, at the conclusion of the order for recognition of Senators on tomorrow, there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 9:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9:30 a.m. tomorrow.

The motion was agreed to; and at 5:11 p.m., the Senate adjourned until tomorrow, Wednesday, September 15, 1976, at 9:30 a.m.

CONFIRMATION

Executive nominations confirmed by the Senate September 14, 1976:

DEPARTMENT OF DEFENSE

David Robert Macdonald, of Illinois, to be Under Secretary of the Navy.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

STAT

hibition been in the Senate bill since June, but its parameters were explained in a floor statement by the principal sponsor of the bill Mr. PHILIP A. HART, on September 8:

Section 4G(1)(A) prohibits the use of percentage contingency fees in parens patriae cases filed under Section 4C. This prohibition is to be imposed by the court in awarding attorney's fees under subsection 4C(d)(1) and in approving dismissals and compromises under subsection 4C(c).

Section 4G(1)(B) makes explicit the prohibition of other contingency fees unless such fees are determined by the court after a litigated judgment under subsection 4C(d)(1) or, if a case is settled, by the court under subsection 4C(d)(1) and 4C(c).

The standards to be used by the court in determining a reasonable attorney's fee are as set forth in the Senate Report No. 94-803. These provisions are included to assure both the reasonableness of the fees and that the bulk of the State recovery would be distributed to consumers—not lawyers.

What the Senate bill does permit, Mr. President, is a fee—a "reasonable" fee—determined by the court. Such fee can be contingent on success, but I submit that a reasonable hourly fee contingent on success is a far cry from a percentage contingency fee of one-third or one-half of the damages awarded. A reasonable fee contingent on success, Mr. President, means that parens patriae actions can be filed which will result in plaintiff's counsel receiving nothing if the case is lost.

This very provision, Mr. President, was included in the bill, because of the strong arguments of companies like Bristol-Myers that parens patriae could be abused by the States and used to harass business through the filing of frivolous suits. I ask my colleagues to judge, Mr. President, what stronger deterrent to the filing of frivolous suits can exist than counsel's knowing if he loses he will not receive a fee?

Moreover, Mr. President, States cannot contract to pay counsel "$300 and $400 per hour." Whatever fees counsel will get under the bill will be "determined"—not merely "approved"—by the court, and they must be based primarily on a reasonable hourly fee. As Bristol-Myers well knows, the $300 and $400 per hour fees were paid in cases under circumstances which did not prohibit percentage contingency fees.

In conclusion, Mr. President, I stand by the Senate action and believe it to be highly responsible, as well as responsive to the legitimate concerns expressed by the responsible businesses which oppose the Senate bill. I rise to make this statement out of a strong conviction that the type of lobbying going on with respect to this bill, epitomized by the Bristol-Myers letter, should not and cannot be condoned by responsible legislators regardless of their views of the merit of the legislation.

EXHIBIT 1

BRISTOL-MYERS CO.,
Washington, D.C., September 7, 1976.

DEAR CONGRESSMAN: Shortly the House will vote on the final passage of H.R. 8532, the Antitrust Improvement Act.

You will recall that the House recently passed the parens *patriae* bill with its CID and premerger notification bills. The House bill prohibited contingent fees. The so-called Senate "compromise" modifies the House bill and reinstates contingent fees.

The Senate "compromise" bill permits private lawyers hired by State attorneys general (which is the usual practice) to get $300 and $400 per hour. This is unconscionable.

Furthermore, court approval is no assurance that such fees will be reasonable. In the tetracycline settlements, the courts approved in virtually every state more money for the plaintiffs' attorneys than was actually returned to consumers.

I do hope you will seek to correct this windfall to private plaintiff attorneys which may prove so tempting as to actually stir up litigation.

Very truly yours,

WILLIAM G. GREIF.

NOTE

In the RECORD of September 7, 1976, Mr. NELSON's remarks in connection with the submission of his concurrent resolutions were incorrectly set forth in two paragraphs.

In the permanent RECORD, the second paragraph on page S15256 will be printed as follows:

Mr. President, I am here to question just how well the executive branch has conducted its examination of these plans. Merely observing the manner in which notice of these proposed sales was transmitted to the Committee on Foreign Relations raises disturbing questions. Comparing the orignial laundry list of proposed sales and the resultant individual notifications reveals serious discrepancies, even though both transmissions were prepared by the Department of Defense. For instance, the day after receiving the overall list of offers, the Committee on Foreign Relations was surprised to find in its box an additional arms sales notification to Israel, boosting obligations to that country by something over $72 million. That same communication brought news that the dollar value of proposed arms sales to Saudi Arabia had mysteriously increased by $40 million. In transmittal No. 7T-40 for training equipment to Saudi Arabia, there is $1 million discrepancy between the cover letter and the actual notification. Now DOD may not be disturbed by these clerical errors. After all, $1 million is a drop in the bucket for Saudi Arabia which is planning to buy $702 million worth of FMS goods and services on just this 1 day. But, Mr. President, a $1 million clerical error is at least a good indication that not everything is exactly shipshape in America's arms sales policy. Discovery of these errors should lead us to probe further.

Also, in the permanent RECORD, the third paragraph on page S15257 will be printed as follows:

Mr. President, clearly Congress must act to impose a more cautious note in our arms sales policy. The administration has demonstrated that it is incapable of so acting by sending up its Labor Day packet. The chaotic manner in which this announcement was delivered reveals a deeper chaos in this arms sales program which only a responsible Congress can now temper.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

CORRUPT OVERSEAS PAYMENTS BY U.S. BUSINESS ENTERPRISES

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the unfinished business, S. 3664, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3664) to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such Act to maintain accurate records, to prohibit certain bribes, and for other purposes.

The PRESIDING OFFICER. The pending question is on the amendment of the Senator from Idaho (Mr. CHURCH).

(Mr. CHURCH's amendment No. 2292 is printed in yesterday's RECORD at page S15792.)

The PRESIDING OFFICER. The time for debate on this amendment is limited to 1 hour to be equally divided and controlled by the Senator from Idaho (Mr. CHURCH) and the Senator from Texas (Mr. TOWER), with the vote thereon to immediately follow. Who yields time?

Mr. PROXMIRE. Mr. President, I ask unanimous consent that a quorum call be ordered without the time being taken from either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. I ask unanimous consent that Mr. Howard Nell and Mr. Clifford Alexander of the staff of the Committee on Banking, Housing, and Urban Affairs be granted the privilege of the floor during the debate and vote on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I ask unanimous consent that the time start running at this point.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. TOWER. I yield myself such time as I may require.

Mr. President, the amendment offered yesterday by Mr. CHURCH to S. 3664 is enormously broad and substantively intricate. It possesses implications far beyond the scope of what has been thoughtfully considered by the Banking Committee.

There has been neither hearings nor debate on this issue. The vast majority of the Members of this body have not even had an opportunity to carefully consider the proposal.

Mr. President, we appear to be once again embarked on a course of legislating first and asking questions later. This is not a proper way to legislate.

Before I proceed to critically analyze the contents of this amendment I would like to emphasize its serious nature. I have just received letters from the Chairman of the Securities and Exchange Commission, Mr. Hills, and the Secretary of Commerce Mr. Richardson. They both voice strong opposition to the amendment. Mr. Richardson states as follows:

This is in response to your request for comments on an amendment proposed by Senator Church to S. 3664, Senator Proxmire's bill dealing with improper corporate payments abroad. In my capacity as Chairman of the President's Task Force on Questionable Corporate Payments Abroad, I must oppose the Church amendment for the following reasons:

Its disclosure requirements are both too broad and too narrow. They are too broad in the class of payments required to be disclosed—American corporations would have to disclose payments made for virtually all services rendered for the corporation outside the U.S., as well as payments made in connection with business with foreign governments. This sweeping disclosure, in my judgment, could create a serious paperwork burden for both American business and for the Securities and Exchange Commission, vastly disproportionate to the goals of those of us who have sought disclosure as a means to end the questionable corporate payments problem. The Church amendment's disclosure requirements are too narrow in that they apply only to SEC regulated firms, which constitute approximately one third of U.S. firms engaged in international commerce.

The treble damages provision of the Church amendment is redundant with current law—namely, section 2(c) of the Clayton Act.

The foreign policy analysis required annually by the Secretary of State is unnecessary and inappropriate. Public disclosure of such an analysis could itself have a substantial deleterious effect upon the foreign policy of this country.

The amendment's exhortation that the President make every feasible effort to obtain appropriate international agreements to end inappropriate payment practices in international commerce is unnecessary. The Administration already has underway the most vigorous possible efforts in this regard.

The Church amendment could have a sweeping effect on the conduct of international business by U.S. firms and upon this nation's foreign relations. Despite this fact, no hearings have yet been held on Senator Church's amendment in its current or previous form. It would seem unwise in the extreme, to adopt such legislation without a more deliberate exercise of legislative process.

It is my understanding that the Chairman of the SEC is forwarding a letter regarding the broad grant of discretion which would be given the SEC by this legislation. It remains my feeling, that the SEC, while playing a vital role in deterring improper corporate payments, cannot and should not bear the full burden of resolving the important public and foreign policy issues inherent in this problem.

Further, Mr. President, I wish to read into the RECORD the comments of Mr. Rod Hills, the Chairman of the Securities and Exchange Commission:

DEAR SENATOR TOWER: Thank you for providing us an opportunity to express our views regarding the amendment to the Foreign Corrupt Practices Act of 1977 which Senator Church introduced yesterday on the floor of the Senate. Although we were not provided in advance with the actual text of Senator Church's proposal, we understand that it would amend the Securities Exchange Act of 1934 to impose upon issuers of securities comprehensive recordkeeping and disclosure requirements relating to contributions, payments, gifts, commissions or things of value to commercial agents and foreign officials, as well as payments made in the context of a political contribution to a foreign government.

That such an amendment which impacts so significantly on the Commission's work should be considered at this time and in a manner inconsistent with the careful approach of the Senate Committee on Banking, Housing and Urban Affairs in its consideration of S. 3664 is a matter of gravest concern.

As you are aware, the Commission, over the past two years, has been engaged in an effective and wide ranging program to meet the problems presented by questionable and illegal corporate payments and practices both at home and abroad. To date, these efforts have resulted in the institution of over a score of enforcement actions and the voluntary disclosure of questionable or illegal practices by over 200 other companies.

Actions initiated by the Commission in its enforcement and voluntary disclosure programs have been complemented by the Auditing Standards Executive Committee of the American Institute of Certified Public Accountants' circulation of an exposure draft regarding "Illegal Acts by Clients." Similarly, at the Commission's request, the New York Stock Exchange recently sought comments from its membership on a proposed amendment to its listing policies which would require a form of outside audit committee as a condition of listing on the Exchange.

Through these initiatives a problem which, by any measure, was sufficiently widespread to be a matter of deep concern is steadily being overcome. In the long run, the lessons to be learned from this experience and the new mechanisms of corporate accountability which have resulted in the judgment of the Commission serve to strengthen the quality of corporate management, public confidence in the business community and the integrity of our Nation's capital markets.

As we advised the Senate Committee on Banking, Housing and Urban Affairs during its consideration of S. 3664, the Commission's authority to deal with the problem under its existing legislation and disclosure requirements appeared to be adequate in terms of the objectives of the federal securities laws. Nonetheless, we recognized that limited-purpose legislation in this area was desirable in order to demonstrate a clear congressional policy with respect to a controversial problem.

We also recognized, as the proposed legislation progressed through Committee sessions, a strong desire on the part of the members of the Committee to absolutely proscribe certain types of payments. As reported from the Committee, S. 3664 embodies a response to both the Commission and the Committee's principal objectives.

The amendment currently proposed by Senator Church seeks to confer upon the Commission specific authority to require more detailed disclosures of classes of corporate payments beyond those absolutely proscribed by the existing provisions of S. 3664. The Commission's record of action indicates that extensive corporate disclosures of matters of importance to investors in this area have already been made pursuant to existing requirements embodied in the Securities Exchange Act that issuers disclose to the Commission and to the public all material information regarding the activities of companies registered under the Act. Indeed, Section 13(a) of the Securities Exchange Act—which Senator Church's proposal seeks to amend to require more detailed disclosures of corporate payments abroad—already authorizes the Commission, by rule, to require the disclosure of additional information.

Accordingly, it is our view that Senator Church's proposal would significantly depart from the traditional flexibility of the federal securities laws. Although apparently conferring some discretion on the Commission, we believe the proposal would in fact deny the Commission a portion of the necessary flexibility to vary disclosure requirements which fit the precise circumstances involved in given cases. The Commission is concerned that any specific requirements with respect to disclosure of information concerning foreign payments could either prove inadequate to deal with varying circumstances and devices, or could, perhaps, prove unnecessarily over inclusive. In particular, any overall requirement that every issuer must identify the recipients of payments not already required by existing disclosure provisions or proscribed Sections 2 and 3 of S. 3664, would be of questionable benefit to investors or of but peripheral interest to them.

Since the submission on May 12, 1976 of our report to Senator Proxmire on Questionable and Illegal Corporate Payments and Practices, we have not changed our view that American business has the resolve and capacity to correct the problems we have uncovered. We believe that if Congress seeks to take an initiative in this area, new legislation should be directed toward promoting a congressional policy directed at the new and better governance of American companies and that legislation should not stifle their capacity for self correction. While the Commission is sympathetic with the underlying objectives of Senator Church's proposal, we believe that the enactment of the legislative proposals set forth in the May 12 report represents the appropriate vehicle for this expression of congressional policy. Moreover, should Congress determine that policy consideration unrelated to the objectives of the federal securities laws warrant further legislative action in this area, we would urge that such legislation be considered separately from amendments to the securities laws.

For these reasons, should the Congress deem it appropriate to enact Senator Church's proposal as part of S. 3664, the Commission would be constrained to urge that the President veto the legislation.

I believe the concerns raised by these gentlemen should not be taken lightly.

Mr. PERCY. Mr. President, will the Senator yield for a unanimous consent request?

Mr. TOWER. I yield for that purpose.

Mr. PERCY. Mr. President, I ask unanimous consent that Dr. Charles Meissner, of the staff of the Committee on Foreign Relations, have access to the floor during the debate and votes on the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Will the distinguished Senator yield for 2 or 3 minutes so I may comment on Chairman Hills' letter?

Mr. TOWER. I am delighted to yield for that purpose.

Mr. PERCY. Mr. President, may I first say that I have just seen this letter, but on first reading and after listening to the distinguished Senator from Texas, I concur with it.

I also wish to bring to the attention

of the Senate the fact, as I have commented before, that Chairman Hills has done an absolutely outstanding job in this field. He has used the authority and power as Chairman of SEC in an extraordinary measure to move into an area that has been revealed by the Church Subcommittee on Multinational Corporations of the Committee on Foreign Relations. I have the privilege of serving as the ranking Republican on this subcommittee. I am sure Senator CHURCH would feel that Chairman Hills has done an outstanding job within the scope and authority that he has.

This has been a very unpleasant task for both Senator CHURCH and myself to carry on this work for several years. But it has been absolutely essential and necessary. I think it shows the strength of our system, that we not only reveal this but also have immediate followthrough by the regulatory agency and Congress.

While I oppose the Church amendment, I fully support the Proxmire bill. I think it has been well thought through. It has had hearings. Perhaps Senator CHURCH is surprised that I would oppose his amendment. Part of it embraces and covers an amendment that Senator CHURCH sponsored and I was his principal cosponsor on the Foreign Assistance Act. This amendment I felt was sound and good as it applies to U.S. arms sales. I do not consider arms as normal commercial traffic. But the present pending Church amendment I regretfully oppose.

The broad applications of the original Church-Percy amendment in the foreign assistance bill requires a tremendous reporting burden which I simply do not feel can and should be imposed.

I think that for the second part, a private right to action which allows a competitor to sue for loss of business if a bribe or illegal payment is made, opens U.S. firms to legal harassment which does not guarantee enforcement, but will guarantee high prices to consumers as these legal costs are passed on. Most of the businessmen with whom I have been in contact think that the private right of action will bring these harassment suits, which are more cheaply settled than fought in court, resulting in much higher business cost. I know Senator CHURCH has tried to include language in this section which would moderate the number of suits, but I do feel the most important thing is that at this stage there have been no public hearings on the Church amendment as it relates to the Proxmire bill. The third section requires a report from the State Department. The State Department, it is my understanding, objects to this concept in that a report publicly sensitizes the issue.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. PERCY. Will the Senator yield me 2 additional minutes?

Mr. TOWER. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. PERCY. I am loath to support the amendment, because of the lack of hearings. I will vote against it and if it is incorporated in the bill, I regretfully would have to oppose the bill itself. And I hope to be able to support the Proxmire bill.

I hope that we will have hearings on Senator CHURCH's concept. He has been in the forefront and is a leader in this field of trying to root out corruption. I just feel that the pending amendment goes too far and we are not sure how we can measure the consequences of it and it is too far-sweeping and wide-sweeping to have incorporated without adequate hearings on it. Certainly, it should be aired. I think the Senate should also consider suggestions that have been put forth by such industry leaders as Harvey Kapnick and Arthur Anderson and examine the new regulations of the New York Stock Exchange.

I do wish to commend Senator CHURCH for what he has accomplished and done in focusing our attention on it, and possibly by putting the amendment down he makes the Proxmire bill look a little bit milder. The Proxmire bill is a very good, tough bill as it stands. I think it will move us forward. It will be supported by the SEC.

I feel confident that the Proxmire bill will be signed by the President. But we are fairly certain, with the Chairman of the SEC saying he would recommend to the President that the whole thing would go down the drain, that is the whole bill would be vetoed if the Church amendment is incorporated.

For these reasons, I will support the Proxmire bill, but respectfully oppose the Church amendment.

Mr. TOWER. I thank the distinguished Senator from Illinois for his comments.

We have been informed by the Department of State that they are in opposition to the Church amendment. We have no letter from them, Mr. Kissinger is a little hard to find these days. We do have an official position from the State Department that they are in opposition to the Church amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I yield myself such time as I may require.

First of all, it does not surprise me that the State Department opposes the amendment. In all the months that we have investigated the practices of multimillion-dollar bribes and payoffs all over the world, we have yet to find any evidence of State Department concern or State Department initiative taken at any time to deal with the problem. When these bribes were finally exposed, they delayed for months even taking token action.

So I really do not think the State Department wants any legislation in this field. I believe their attitude fairly could be characterized as one of indifference or perhaps benign neglect.

Mr. President, this problem is so serious and so widespread that if we are going to legislate a remedy, it must be a remedy that is commensurate with the problem. I take nothing from the efforts made by the Committee on Banking, Housing and Urban Affairs in bringing this bill to the floor of the Senate. But what does the bill do, and how can it possibly be commensurate with the problem? The bill simply makes bribes abroad illegal. I am wholly in accord with that objective, though all of us recognize the difficulty of detecting or proving bribery abroad. It is tough enough to do here at home. Then Senator PROXMIRE's bill makes certain changes in the internal accounting system of corporations. Mr. President, if this bill were really sufficient to provide a remedy for this immense amount of corruption that we have uncovered abroad in connection with the sale of arms and the sale of oil and the sale of other commodities by large companies, we could be sure that this place would be buzzing with lobbyists. They are not concerned about this bill. They have no reason to be concerned about it. That is why these corridors are not filled with the lobbyists of any companies coming here to tell us that we must not pass this bill.

This bill has the approval of the SEC, and it is a cause of no particular worry to the companies. That, I suggest, is the best proof of its inadequacy.

If we want to get to the root of this problem, we must require these companies to disclose publicly the fees and commissions they pay to their agents abroad. The Senate already has approved that principle in connection with the Arms Sales Act, so that the amendment I propose today is no new or novel departure. It simply would apply similar reporting requirements to businesses subject to the jurisdiction of the Securities and Exchange Commission.

It has been said by the distinguished Senator from Texas (Mr. TOWER), and by my colleague on the subcommittee, the distinguished Senator from Illinois (Mr. PERCY), that neither can support the amendment because it would impose too large a burden upon these big companies. They would have a furnish a vast amount of information to the Securities and Exchange Commission, out of all proportion to the need.

Mr. President, I reject that argument, and I cite the language of the amendment itself, which reads in part as follows:

. . . such information and documents (and such copies thereof), as the Commission shall deem necessary or appropriate to provide a complete accounting of any contribution, payment, gift, commission, or thing of value, as defined by the Commission, not already reported pursuant to provisions of sections 22 or 38 of the Arms Export Control Act . . .

The language of the amendment clearly gives to the Securities and Exchange Commission the discretion necessary to eliminate the need to report minutiae.

What we are seeking here is a full accounting of substantial fees paid to agents in connection with their sale of-

forts abroad. Only if the information to be lodged with the Government and made public will it be made possible really to deal with the terrible abuses and corruption that has been uncovered by the investigation of my subcommittee during the past 2 years. This I am certain of.

I know that the reporting requirement is objectionable to these big companies precisely because it would be effective. If the law made it mandatory, subject to penalty, to list all such fees paid to foreign agents, then we can be sure that any questionable fee, where the amount was out of proportion to the services that might be accepted, would alert the Government, alert the appropriate committees of Congress, and alert the press that possible bribery was involved.

That is why they do not want this reporting requirement. Reporting is the teeth that would make this reform bill effective. Without this amendment, I think we are engaging in pure tokenism.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. CHURCH. I am happy to yield.

Mr. HARRY F. BYRD, JR. Mr. President, some months ago, the Senator from Virginia introduced legislation dealing with the question of the bribing of foreign officials.

When the tax reform legislation was before the Committee on Finance, the committee adopted the proposal which I introduced in the form of a bill. Then it was approved by the Senate and the substance of it was approved by the conferees.

The proposal which I introduced would require any payments made by a corporation to foreign officials or agents of foreign governments—it would require that corporation to report that fact to the Department of the Treasury. Then the Department of the Treasury would determine whether it was an illegal payment or a bribe.

I have not been able to be here for the entire discussion, so I may have missed some of the key points, but as I listened to the able Senator from Idaho just a few minutes ago, I thought that much of what he has discussed is embodied, as I visualize it, in the Byrd amendment, which is a part of the tax reform legislation; namely, the requirement that each company or corporation making payments to foreign officials or agents of foreign governments report that to the Secretary of the Treasury. Is that a basic part of the Senator's amendment?

Mr. CHURCH. I think that both the Senator from Virginia and the Senator from Idaho are trying to reach the same problem. The amendment that I have offered goes somewhat further than the Senator's amendment, though I certainly approve of his. My amendment calls for public disclosure of direct and indirect payments to Government officials and of all substantial fees and commissions paid to foreign agents. There will be no public disclosure where the President finds that such might seriously impair the national security interests of the United States. Through this device, I would hope disclosures would be public and, thus, subject to the perusal of Congress, the various departments of the Government, and the press, and the public at large.

The second difference, I suggest—though I am not familiar with the actual wording of the Senator's amendment—is that this amendment attempts to reach the ultimate recipient. We found that, so often, where large companies were engaged in multimillion-dollar bribery, they did it through dummy corporations of various kinds, making it extremely difficult to trace the money. Unless a corporation is required to enter into arrangements to determine where the money was ultimately destined and, second, to report who ultimately got the money, the money is virtually untraceable. These dummy corporations throw up a protective screen; therefore, a reporting requirement that does not go beyond the initial recipient to the ultimate recipient is one that is not likely to be effective.

Mr. HARRY F. BYRD, JR. I think that the Byrd amendment would take care of that point. Besides a disclosure provision in the Byrd amendment, it also uses the tax laws to penalize those companies and those corporations which make illegal payments or bribes to foreign officials, so that proposal is a rather strong one.

It is stronger than President Ford has recommended insofar as his public statements are concerned. I think it should be an effective one in getting at the problem which the Senator from Idaho wishes to get at, and the Senator from Wisconsin, as well as the Senator from Virginia.

I have taken a keen interest in this question of attempted bribery of foreign officials, because I think it reflects adversely on our Nation. It is a wrong way to do business.

If the American businessmen will collectively say, "We will not submit to this," they can bring about a much better business climate and cut out these bribes.

The legislation I introduced and the Senate approved and the amendment offered by the Senator from Idaho would encourage just such action on the part of various businessmen.

What concerns me about the amendment of the Senator from Idaho is whether it goes unnecessarily far. I do not say at the moment that is does, but I am concerned that it goes unnecessarily far in redtape and possible harassment of business, and would require a heavy increase in the number of Federal employees as well as drive up business costs.

In any case, the Senator from Idaho and the Senator from Virginia are trying to accomplish the same purpose.

I am persuaded to the view that the legislation already adopted by the Senate in the tax reform measure takes care, to a great degree, of the problem with which the Senator from Idaho is so deeply concerned.

Mr. CHURCH. I thank the Senator and I commend him for his work. I view this amendment as supplemental to his, only reinforce what he, himself, is trying to accomplish.

Mr. PROXMIRE. Will the Senator yield?

Mr. CHURCH. I am happy to yield.

Mr. PROXMIRE. As the Senator knows, I support his amendment; I enthusiastically support the amendment. I think it is a very helpful supplement to the bill that is before us.

Also, I want to emphasize what I said yesterday, that nobody in the Congress, the House or the Senate, has done nearly as much as the Senator from Idaho has done to create the atmosphere in which we can pass legislation like this and act effectively against this problem. I think that undoubtedly, also, his action has stimulated the SEC and other agencies to act. I think he has been the leader in this area.

Let me also say to the Senator from Idaho that, although I think his amendment is a good amendment and I shall support it, I do not think it is quite right to say that the bill without his amendment is the toothless tiger which the Senator from Idaho describes. No. 1, it does make it a policy of this country that it is against the law, illegal, to pay a bribe to a foreign official. There is no question about it; we do not have it now. The bill makes it illegal. I think that is a good deterrent.

I do not know of any businessmen who want to violate the law of the United States. I think this is going to be a good deterrent.

No. 2, it leaves a far more effective paper trial. It requires that the businessmen of the country must be responsible to set up an accounting system that will inform them of what happens to their assets so that, if a bribe is paid, they will know.

It makes it a crime to create a slush fund for this purpose or to phony up their books in this way or use dummy corporations in this way. It uses the very carefully developed language of the SEC in order to achieve that.

So I think this bill is an effective means of deterring bribes. It is not as good as it could be, if we could add the amendment of the Senator from Idaho. But I think it is a very good proposal, a step in the right direction, and I hope it is not downgraded.

Mr. CHURCH. May I say to the Senator that I really had not intended to describe the bill as a toothless tiger. I would like the bill to be a saber-toothed tiger. As it comes to the Senate it has got one big saber tooth. I would like to add the other one. For everyone knows that the saber-toothed tiger, with only one saber tooth——

Mr. PROXMIRE. It is better than no tiger at all.

Mr. CHURCH. It is better than no tiger at all. But let us do it right and see that this tiger has both saber teeth, and we can do that if we pass this amendment.

Mr. PROXMIRE. In the passage of this bill, we have had assistance from a number of facets of our society interested

in corporate activity, including the accounting profession, business leaders, and most particularly, the Securities and Exchange Commission. I have already referred to the contributions of the Commission in this process. I now wish to discuss an amendment to S. 3664 that the Commission has proposed.

Sections 2 and 3 of the bill reflect the proscriptions of certain types of foreign payments. The Commission noted that because the bill contains an absolute provision against certain foreign payments, an argument might be made that the legislation reflects congressional concern for the Commission's interpretation of the "materiality" standard for determining the disclosure obligation established by other sections of the Federal securities laws. To alleviate this specific problem, the Commission suggested an express disclaimer in the legislation that the bill would not affect the ability of the Commission or private parties to induce disclosure of material facts to investors or others under other provisions of the Federal securities laws.

I think that the Commission's careful articulation of the factors to be considered in determining the obligation to disclose certain facts regarding questionable or illegal corporate payments and practices, contained in the comprehensive report submitted to my committee in May of this year, clearly indicates that it is proceeding in a thoughtful and responsive manner in this area, and I note that the general standard for "materiality" subsequently adopted by the Supreme Court in *TSC v. Northway*, 44 U.S.L.W. 4852 (June 14, 1976), comports with the definition advanced by the Commission as amicus curiae. As the Commission itself notes, it was not the intention of the draftsmen of S. 3664, or of my committee in approving that bill, in any way to question or diminish the work of the Commission over the years in giving content to the concept of materiality. Because I think that the bill and its legislative history are clear in this regard, I consider it unnecessary to encumber the legislation to the specific language proposed by the Commission.

Mr. TOWER. Mr. President, I yield myself such time as I may require.

I would like to note that the saber-toothed tiger is now extinct [laughter] and I cannot imagine my distinguished progressive and liberal friend from Idaho characterizing a bill that he advocates as a saber-toothed tiger. It really is Neanderthal politics. We will not get into that. I have been accused of that.

Mr. President, I would like to just reemphasize a few points. The proposal of the Senator from Idaho, it should be understood, clearly understood, is not limited to transactions between U.S. concerns and foreign governments. It would also require the reporting of legitimate payments, fees, commissions made by U.S. publicly held corporations to private foreign firms. A sweeping disclosure of this nature is totally unwarranted and without justification. As the Secretary of Commerce points out, it would place an enormous paperwork burden on American industry.

Second, they might note it places American businesses at a competitive disadvantage.

This is a provision for disclosure, not prohibition. The committee bill prescribes that no bribes be paid. It imposes a criminal prohibition on the payment of bribes. This bill is one that requires the disclosure of a great amount of information that, under normal circumstances, would be considered proprietary.

It could also result in the embarrassment not only of foreign governments, but private foreign firms to the extent that they would not want to trade with American firms having to operate under these disclosure provisions.

Now is no time for us to impose inhibitions on the ability of the United States to do business abroad. We have a balance-of-payments problem, and we must remain competitive in the international marketplaces.

I point out further there is also a provision in this amendment that requires foreign policy analysis and annual reporting of the disclosed transaction. This appears to me to be a serious and direct interference in the affairs of other countries, perhaps even in the domestic affairs of other countries. I do not believe it is appropriate to put the U.S. Government in the position of annually commenting on the moral fiber of another country and then giving the report wide circulation.

This provision is, in my view, extremely dangerous and it deserves very careful consideration by not only the Senate Banking Committee but by the Committee on Foreign Relations as well. In addition, I believe we should obtain detailed comment and testimony from the Department of State on the potential adverse impact it might have on the conduct of American diplomacy.

I hope the Senate will not rush into consideration of this matter now. I hope the amendment will not be adopted. I think if the amendment is adopted it will sound the death knell for what we are really trying to do, and that is to specifically proscribe bribery. This is a matter of some urgency that must be dealt with. But because, as Secretary Richardson states, this amendment is too broad, and, at the same time, too narrow; it jeopardizes enactment of this legislation so that we will end up with nothing if the Church amendment is added.

I might also note that Secretary Richardson said it is too narrow and that it applies only to publicly held corporations that do only one-third of our business abroad. What about the other two-thirds? They are not even brought under the scope of the Church amendment. So, in effect, what you do is you impose an unfair competitive disadvantage on publicly held firms that may be competing abroad with privately held firms or firms that are not subject to the regulations of the Securities and Exchange Commission. It might be discriminating in favor of one American firm against another American firm.

So I hope the Senate will reject this amendment and adopt the bill that has been proposed by the distinguished Chairman of the Banking Committee and myself in its present form without any debilitating amendments of this kind.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I think we have debated this extensively. I would simply reply to the arguments of my distinguished friends from Texas by saying that, we really need not be concerned that the amendment would impose an undue burden on business.

First of all, these publicly held corporations subjected to SEC control are, for the most part, very large, and they will have no great difficulty complying.

Second, they do not have to reveal a massive amount of minutia, for the amendment clearly gives the SEC the authority, the discretion, to limit the reporting requirement to substantial fees.

If we do not take this course, I just suggest to the Senator we have failed to learn what was so clearly revealed in hearings, namely, in most cases these fees are paid to intermediaries. In order to determine whether or not the money has been used to bribe foreign officials it is necessary to identify the ultimate recipients. Unless you do that then the reporting requirement is going to be rather meaningless.

This amendment, Mr. President, for the first time establishes an adequate reporting requirement. That ought to be the purpose of the legislation, and it is a requirement not unlike that which we already have approved in connection with the Arms Sales Act. I know I am repeating myself. But then I do think the argument made against the amendment on this particular ground is unfounded.

Finally, Mr. President, the argument made by my good friend John Tower that the Secretary of State would be required by this amendment to report annually to the public an analysis of this general problem does not alarm me at all. The report is to be made to the Congress of the United States, not to the world. Specifically, it is to be made to the two committees having to do with foreign relations, the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives. That is where such a report ought to go.

The reason why this provision is contained in the amendment is to try to build a fire under the State Department and get it involved, get it interested, make it face up to what is going on, to the adverse impact, indeed sometimes disastrous impact, that the widespread corrupt practices can have on the foreign policy of the United States.

So, all in all, I am persuaded, Mr. President, that this is an excellent amendment, and I hope the Senate adopts it.

The PRESIDING OFFICER. Who yields time?

Mr. TOWER. Mr. President, I yield myself 1 minute.

Mr. President, the amendment states, page 4, line 4:

Each statement filed under this subsection shall be made available for examination and copying by the public, except to the extent the President determines that the disclosure of information contained in a particular statement will severely impair the conduct of the United States foreign policy, and transmits to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report stating that such a determination has been made and summarizing the information which is subject to the determination.

If such a determination is made, a notation to that effect shall be entered in that part of the statement which is made to the public.

I find that wording a little bit ambiguous. It occurs to me this does not proscribe the publication of this information once the President has made his determination of impairment of the conduct of foreign policy, but simply requires that a notation be made on the information that it does indeed impair American foreign policy.

I think there are other serious faults in this amendment. But I think that one alone is worth commenting upon at the moment.

Mr. HARRY F. BYRD, JR. Will the Senator yield for a question?

Mr. TOWER. I yield to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. Did the committee consider, in essence, what is now the Church amendment and, if so, what was the attitude?

Mr. TOWER. The committee did consider similar legislation, but only held a brief hearing. At the hearing only members of the SEC testified on it. There was no testimony from the Departments of State or Commerce, or from private industry of any kind. Of course, the committee did not act on that legislation.

Mr. HARRY F. BYRD, JR. Did the committee members indicate by a vote as to the attitude toward that amendment?

Mr. TOWER. A similar position was rejected in committee by a rather substantial vote. I think it was 11 to 3, or something like that.

Mr. HARRY F. BYRD, JR. I thank the Senator.

Mr. MANSFIELD. Will the Senator yield?

Mr. TOWER. I yield 1 minute to the Senator from Montana.

ITEMS PLACED UNDER "SUBJECTS ON THE TABLE"

Mr. MANSFIELD. Mr. President, this has been cleared on the other side.

Mr. President, I ask unanimous consent that the following pieces of legislation be taken out from general orders under rule VIII and transferred to subjects on the table: Calendar No. 707, S. 1624; Calendar No. 751, Senate Resolution 68; Calendar No. 779, S. 2837; Calendar No. 970, S. 2715; Calendar No. 989, H.R. 10138; Calendar No. 1063, S. 3737.

I believe that is it for the moment.

Mr. ALLEN. Reserving the right to object, would the distinguished majority leader give a little more explanation on [illegible] what is being done?

Mr. MANSFIELD. Yes. The first one, Calendar No. 707, a bill to promote the free flow of commerce among the several States, and for other purposes.

Mr. ALLEN. I am familiar with that bill. I would like to object, if the distinguished majority leader does not object to my interposing an objection.

Mr. MANSFIELD. Does the Senator wish to object to this request?

Mr. ALLEN. As to this particular one. Is this putting the bill in the position where it can be called up more easily?

Mr. MANSFIELD. No. It goes back under subjects on the table.

Mr. ALLEN. I see.

Then it would take a motion to get them off the table?

Mr. MANSFIELD. A motion to call them up, as it would under general orders.

Mr. ALLEN. I withdraw my objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

[Later the following ocurred:]

Mr. MANSFIELD. Mr. President, I ask unanimous consent that Calendar No. 1092, Senate Resolution 495, be taken off General Orders and be placed under Subjects on the Table.

The PRESIDING OFFICER. Without objection, it is so ordered.

CORRUPT OVERSEAS PAYMENTS BY U.S. BUSINESS ENTERPRISES

The Senate continued with the consideration of the bill (S. 3664) to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such act to maintain accurate records, to prohibit certain bribes, and for other purposes.

Mr. TOWER. Mr. President, I yield 3 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, I have just seen the letter from Elliot Richardson, Secretary of Commerce, and again I find myself in agreement.

First, he makes the statement that American corporations would have to disclose payments made for virtually all services rendered for the corporation outside the United States. This seems a very incongruous situation, when the Congress of the United States creates paperwork at the very time we have a Commission actively working to try to correct unnecessary governmental burdens. All of this has to be passed on to the consumer. To require a corporation such as Caterpillar—that virtually does all its business through agents abroad—to report and file paperwork, to require them to go through all these procedures, serves no earthly good whatever.

In my own experience in 110 or 112 countries in which I did business, in only five we do business directly. All the others were through agents. I certify on a Bible and in blood that at no time in 25 years of business experience did our company ever have to pay 1 single cent to anyone to get business. We did have agents. We felt it in the best interest of the country to have people who were nationals abroad engage in business as partners with us and sell products abroad.

I have just recently had a recertification from the chief executive of the company that in all the searching they have done they never found a single party where questionable payments were involved.

Why should that company be required to file all these reports? Why then impose that load on the companies that are regulated by SEC? Even more pertinent is the statement by the Secretary of Commerce that this amendment applies only to SEC-regulated firms which constitute approximately one-third of of the U.S. firms engaged in international commerce.

What about the other two-thirds then?

It is for these reasons that I feel this amendment simply does a disservice to the bill. I have a feeling that if it is tacked on this bill, the Proxmire bill goes down the drain. I do not want to see that happen. I think that bill can stand on its own feet, will be supported, and I trust will be signed by the President.

Why encumber the bill with something on which we have had no hearings, to which the administration is firmly opposed and independent regulatory agencies are firmly opposed?

Having spent 2 years now on these kind of matters in the Multinational Subcommittee, I cannot see very little that is good in this amendment. The cost and the burden involved is great, and not commensurate at all with what would be gained.

I do feel that many companies in our country have really faced up to this issue, are cleaning house from top to bottom on this issue of questionable payments. Outside boards are now getting very militant on this issue in companies. Directors are not going to serve on company boards where they feel they are not being given proper information. We have outstanding accounting firms, for instance Arthur Anderson headed by Harvey Kalsnick, who by the way has taken a leadership position in this field, pushing to clean up practices within the industry. We have the New York Stock Exchange now coming out with their new regulations requiring outside oversight in these matters, outside independent auditors, outside select committees to select the auditors.

I think all of these things mean we are going in the right direction.

Certainly, I say that Senator CHURCH has done a noble job in getting this whole trend going. I just tend to think it is a question of overkill now.

Let us let these other forces move. Let us let the criminal penalties be involved. This is a very tough thing that auditors are now asking for. It is a criminal offense under the Proxmire bill if a company misleads their own auditors.

We have gone so far. We are on the verge of really legislating action. Let us act responsively and responsibly. Let us not just do something for the sake of

doing it and have it vetoed because of sound principles which I fully support.

The PRESIDING OFFICER. Who yields time?

The Senator from Idaho has 6 minutes.

Mr. CHURCH. Mr. President, I ask unanimous consent retroactively that Mr. Ira Nordlicht, who has been sitting next to me throughout this debate, be granted privilege of the floor to sit beside me throughout the debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I would be remiss if I did not say to the distinguished Senator from Illinois how much I appreciate the support he has given me as the ranking Republican member of the Subcommittee on Multinational Corporations.

The course of this entire investigation has not been easy for any of us on that committee. It has not been easy to disclose practices that have been of great embarrassment to American companies and that have caused very great controversy, very great difficulties, and political crises abroad.

And yet it was a job which had to be done if we are going to root out and eliminate these corrupt practices in the future.

I just want him to know how much I appreciate the support he has given me through many, many months.

I would close the debate, Mr. President, by saying once more that I really cannot find the argument that this amendment would be overly burdensome a very persuasive one, because the language of the amendment subjects the scope of the reporting requirement to the discretion of the commission in order to eliminate any unnecessary reporting that would not be relevant.

I simply cannot accept that argument as a persuasive one. But I do know, based upon our hearings, that unless we have a reporting requirement that covers all fees and commissions that are paid to foreign agents, we will not have an effective means for dealing with this problem. It is not that most of these fees and commissions are not perfectly legal, perfectly proper, and pay for services rendered. But unless all of the fees and commissions are reportable, it will not be possible to find those that are suspect because of their size. Unless the reporting requirements obligate the corporation to identify the ultimate recipient, then dummy corporations will continue to be used as shields to conceal these practices.

For these two reasons, the amendment really is indispensable, in my judgment, to a truly effective bill designed to adequately correct the serious problem of corruption in our business practices abroad.

The PRESIDING OFFICER (Mr. MORGAN). Who yields time?

Mr. TOWER. Mr. President, I am prepared to yield back the remainder of my time if the Senator from Idaho is prepared to yield back the remainder of his time.

Mr. CHURCH. I yield back the remainder of my time.

Mr. PERCY. Mr. President, I move to table the amendment.

The PRESIDING OFFICER. The motion is not in order.

Under the previous order of the Senate, there is to be a vote on this amendment after the time for debate has expired. Therefore, the motion is not in order. The yeas and nays have been ordered. All time has been yielded back. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Hampshire (Mr. DURKIN), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Tennessee (Mr. BROCK) and the Senator from New York (Mr. BUCKLEY) are necessarily absent.

The result was announced—yeas 29, nays 58, as follows:

[Rollcall Vote No. 592 Leg.]

YEAS—29

Bayh	Hatfield	Metcalf
Burdick	Hollings	Muskie
Byrd, Robert C.	Huddleston	Nelson
Church	Inouye	Pearson
Clark	Jackson	Proxmire
Culver	Leahy	Ribicoff
Eagleton	Magnuson	Symington
Gravel	Mansfield	Talmadge
Hart, Gary	Mathias	Weicker
Haskell	McGovern	

NAYS—58

Allen	Ford	Pastore
Baker	Garn	Pell
Bartlett	Glenn	Percy
Bellmon	Goldwater	Randolph
Bentsen	Griffin	Roth
Biden	Hansen	Schweiker
Brooke	Hathaway	Scott, Hugh
Bumpers	Helms	Scott, William L.
Byrd, Harry F., Jr.	Hruska	Sparkman
Cannon	Javits	Stafford
Case	Johnston	Stennis
Chiles	Kennedy	Stevens
Cranston	Laxalt	Stevenson
Curtis	Long	Stone
Dole	McClellan	Taft
Domenici	McClure	Thurmond
Eastland	McIntyre	Tower
Fannin	Morgan	Williams
Fong	Nunn	Young
	Packwood	

NOT VOTING—13

Abourezk	Hart, Philip A.	Montoya
Beall	Hartke	Moss
Brock	Humphrey	Tunney
Buckley	McGee	
Durkin	Mondale	

So Mr. CHURCH's amendment (No. 2292) was rejected.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILLIAMS. Mr. President, the last year and a half of foreign bribes by scores of U.S. companies is a most unfortunate chapter in the history of American business. We are all aware that the "bribery scandals" have done great damage to this country's relations with foreign nations. The companies who paid the bribes, and those companies' stockholders have also suffered.

The problems and the harm are well documented in the hearing records of the Banking Committee and the Subcommittee on Multinational Corporations. No one expected at the beginning of these hearings that corruption of such magnitude and at such high levels would be documented. No one expected that such disregard for good ethics and good business practices existed in the conduct of American overseas business.

In the past 12 months, persons in every walk of life, including many in the administration, have expressed indignation about the bribery problem. But moral exhortation alone is not enough. The antibribery legislation which is before us today rejects the confused, pious position of the administration that would leave the door wide open for more corrupt payments in the future. It meets the abuses uncovered in a direct and unequivocal manner. S. 3664 announces to the world that we do care about the conduct of our citizens and corporations in foreign countries.

Corporate bribery has been shown to be widespread and multinational in nature. Bribes seem to have become a total way of life for some of the companies and people involved.

But S. 3664 channels this country's efforts at those problems that have had the greatest adverse impact on our own policies and citizens. It only reaches our own companies and citizens. And it makes illegal those bribes that corrupt foreign public officials and that erode the integrity of the disclosure system of the Federal securities laws. In so doing the bill avoids those delicate foreign policy and jurisdictional concerns that could have arisen if we were to interfere with the laws of foreign countries.

Rather than create foreign policy problems, this bill will solve them. Rather than raise concerns in the minds of our friends abroad, this bill will alleviate them. S. 3664, is clearly the best solution to the problem, and I am pleased to support it.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. TOWER. May we have order, please?

The PRESIDING OFFICER. Will the Senate please be in order?

Mr. PROXMIRE. Mr. President, I intend to make a unanimous-consent request in connection with the final passage of this bill, and I wish to explain why.

I think the Senate is going to approve this bill by a big margin. The Committee

on Banking, Housing and Urban Affairs approved it unanimously. It is a bill that we clearly need.

I think every Member of the Senate is aware of the very pernicious effect on our country and American business of bribery overseas. This is a good, strong bill. However, this bill may not go anywhere unless we can attach it to a bill which has passed the House of Representatives. If we pass it in its present form it will go over to the House of Representatives, and they will have to get a rule, have hearings, and it will be delayed.

It is now September 15. We hope and expect to be out of here in 2 weeks.

For that reason, Mr. President, I wish to attach this bill to a bill which has passed the House of Representatives and has been polled out by the Committee on Banking, Housing and Urban Affairs. It is a bill which simply provides for the extension of time on two studies by the Securities and Exchange Commission. It is a bill which is noncontroversial but a bill that has passed the House of Representatives.

If I can attach this bill, on which we are about to act in the Senate, to the bill that has passed the House of Representatives, it will mean we can go directly to conference with the conference committee representatives in the House of Representatives and have an excellent chance of enacting this into law by passing the House of Representatives and the Senate and having the President sign it.

So I hope Senators will agree to what I am about to propose.

UNANIMOUS-CONSENT REQUEST.

Mr. President, I ask unanimous consent that the Committee on Banking, Housing and Urban Affairs be discharged from further consideration of H.R. 12346 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wisconsin?

Mr. TOWER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. PROXMIRE. Mr. President, may I ask my good friend from Texas to reconsider that objection? He also favors this bill. He said so. I know he does. I think he can understand that if we do not take this procedure we are going to have great difficulty enacting this bill into law.

Mr. TOWER. I do not necessarily agree with my distinguished colleague from Wisconsin that the House of Representatives will be slovenly in such an important matter as this. I am sure they are as concerned about the proscription on bribery as we are. I am hopeful that they will carefully consider this measure before the end of the session.

Therefore, Mr. President, I reiterate my objection.

Mr. PROXMIRE. May I just ask the Senator to reconsider that? I agree the House of Representatives is not going to be slovenly. But it is one thing to be laggard and something else to recognize that, with only a few days remaining and with the problem of getting this bill through a committee in the House of Representatives, through the Rules Committee in the House of Representatives, and then acted on by the House of Representatives, it is unlikely. If we are really sincere about acting on bribery, a bill which I think is going to be overwhelmingly approved by the Senate, I do hope he will reconsider that objection.

Mr. TOWER. I think it is important to test the sincerity of the House of Representatives. I have reconsidered my objection of the consent request propounded by my distinguished friend from Wisconsin, and I still object.

The PRESIDING OFFICER. Objection is heard.

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Hampshire (Mr. DURKIN), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Mississippi (Mr. STENNIS), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maryland (Mr. BEALL), and the Senator from New York (Mr. BUCKLEY) are necessarily absent.

The result was announced—yeas 86, nays 0, as follows:

(Rollcall Vote No. 593 Leg.)

YEAS—86

Allen	Goldwater	Nelson
Bartlett	Gravel	Nunn
Bayh	Griffin	Packwood
Bellmon	Hansen	Pastore
Bentsen	Hart, Gary	Pearson
Biden	Haskell	Pell
Brock	Hatfield	Percy
Brooke	Hathaway	Proxmire
Bumpers	Helms	Randolph
Burdick	Hollings	Ribicoff
Byrd, Harry F., Jr.	Hruska	Roth
Byrd, Robert C.	Huddleston	Schweiker
Cannon	Inouye	Scott, Hugh
Case	Jackson	Scott, William L.
Chiles	Javits	Sparkman
Church	Johnston	Stafford
Clark	Kennedy	Stevens
Cranston	Laxalt	Stevenson
Culver	Leahy	Stone
Curtis	Long	Symington
Dole	Magnuson	Taft
Domenici	Mansfield	Talmadge
Eagleton	Mathias	Thurmond
Eastland	McClellan	Tower
Fannin	McClure	Weicker
Fong	McGovern	Williams
Ford	McIntyre	Young
Garn	Metcalf	
Glenn	Morgan	
Hart, Philip A.	Muskie	

NAYS—0

NOT VOTING—14

Abourezk	Hart, Philip A.	Montoya
Baker	Hartke	Moss
Beall	Humphrey	Stennis
Buckley	McGee	Tunney
Durkin	Mondale	

So the bill (S. 3664) was passed, as follows:

S. 3664

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13(b) of the Securities Exchange Act (15 U.S.C. 78m(b)), is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following:

"(2) Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall—

"(A) make and keep books, records, and accounts, which accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

"(B) devise and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances that—

"(i) transactions are executed in accordance with management's general or specific authorization;

"(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and (2) to maintain accountability for assets;

"(iii) access to assets is permitted only in accordance with management's authorization; and

"(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

"(3) It shall be unlawful for any person, directly or indirectly, to falsify, or cause to be falsified, any book, record, account, or document, made or required to be made for any accounting purpose, of any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports pursuant to section 15(d) of this title.

"(4) It shall be unlawful for any person, directly or indirectly—

"(A) to make, or cause to be made, a materially false or misleading statement, or

"(B) to omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading to an accountant in connection with any examination or audit of an issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports pursuant to section 15(d) of this title, or in connection with any examination or audit of an issuer with respect to an offering registered or to be registered under the Securities Act of 1933.".

SEC. 2. The Securities Exchange Act of 1934 is amended by inserting after section 30 the following new section:

"PAYMENTS TO OFFICIALS

"SEC. 30A. It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports pursuant to section 15(d) of this title to make use of the mails or of any means or instrumentality of interstate commerce corruptly to offer, pay, or promise to pay, or authorize the payment of, any money, or to offer, give, or promise to give, or authorize the giving of, anything of value to—

"(1) any person who is an official of a for-

eign government or instrumentality thereof for the purpose of inducing that individual—

"(A) to use his influence with a foreign government or instrumentality, or

"(B) to fail to perform his official functions, to assist such issuer in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality;

"(2) any foreign political party or official thereof or any candidate for foreign political office for the purpose of inducing that party, official, or candidate—

"(A) to use its or his influence with a foreign government or instrumentality thereof, or

"(B) to fail to perform its or his official functions,

to assist such issuer in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality; or

"(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised directly or indirectly to any individual who is an official of a foreign government or instrumentality thereof, or to any foreign political party or official thereof or any candidate for foreign political office, for the purpose of inducing that individual official, or party—

"(A) to use his or its influence with a foreign government or instrumentality, or

"(B) to fail to perform his or its official functions,

to assist such issuer in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality.".

PAYMENTS TO OFFICIALS

SEC. 3. (a) It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, to make use of the mails or of any means or instrumentality of interstate commerce corruptly to offer, pay, or promise to pay, or authoritze the payment of, any money, or to offer, give, or promise to give or authorize the giving of, anything of value to—

(1) any individual who is an official of a foreign government or instrumentality thereof for the purpose of inducing that individual—

(A) to use his influence with a foreign government or instrumentality, or

(B) to fail to perform his official functions,

to assist such concern in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality.

(2) any foreign political party or official thereof or any candidate for foreign political office for the purpose of inducing that party, official, or candidate—

(A) to use its or his influence with a foreign government or instrumentality thereof, or

(B) to fail to perform its or his official functions,

to assist such concern in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality; or

(3) any individual, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised directly or indirectly to any individual who is an official of a foreign government or instrumentality thereof, or to any foreign political party or official thereof or any candidate for foreign political office, for the purpose of inducing that individual, official or party—

(A) to use his or its influence with a foreign government or instrumentality, or

(B) to fail to perform his or its official functions,

to assist such concern in obtaining or retaining business for or with, directing business to, any person or influencing legislation or regulations of that government or instrumentality.

(b) Any person who willfully violates this section shall upon conviction be fined not more than $10,000, or imprisoned not more than two years, or both.

(c) As used in this section—

(1) the term "domestic concern" means an individual who is a citizen or national of the United States, or any corporation, partnership, association, joint-stock company, business trust, or unincorporated organization which is owned or controlled by individuals who are citizens or nationals of the United States, which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or any territory, possession, or commonwealth of the United States; and

(2) the term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof, and such term includes the intrastate use of a telephone or other interstate means of communication or any other interstate instrumentality.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CHANGE OF VOTE—H.R. 14260

Mr. RANDOLPH. Mr. President, I ask unanimous consent that my vote on H.R. 14260 on Friday, September 10, 1976, be changed from "yea" to "nay" and that the permanent RECORD reflect my negative vote.

The PRESIDING OFFICER (Mr. McGOVERN). Without objection, it is so ordered.

Mr. TOWER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McGOVERN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HATHAWAY). Without objection, it is so ordered.

FARMER-TO-CONSUMER DIRECT MARKETING ACT—CONFERENCE REPORT

Mr. McGOVERN. Mr. President, I submit a report of the committee of conference on H.R. 10339 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. HATHAWAY). The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10339) to encourage the direct marketing of agricultural commodities from farmers to consumers, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the RECORD of September 13, 1976, beginning at page H9988.)

Mr. McGOVERN. Mr. President, this conference report is signed by all of the conferees and has been cleared on both sides of the aisle.

H.R. 10339 is directed toward the encouragement of the direct marketing of agricultural commodities from farmers to consumers.

SUMMARY OF MAJOR PROVISIONS OF H.R. 10339 AS AGREED TO BY THE CONFERENCE COMMITTEE

The bill, as agreed to by the conferees—

First, requires the Secretary of Agriculture to carry out a program to facilitate the direct marketing of food commodities from farmers to consumers, for their mutual benefit, under which there would be: a nationwide survey of existing direct marketing operations; an allocation of funds to the State departments of agriculture and the Extension Service of the USDA, to provide assistance for direct marketing within the respective States; and an annual report by the Secretary on activities carried out under the act to further direct marketing;

Second, defines "direct marketing from farmers to consumers" to mean the marketing of agricultural commodities at any marketplace established for the purpose of enabling farmers to sell their agricultural commodities directly to individual consumers in a manner calculated to lower the cost and increase the quality while providing increased financial returns for farmers;

Third, authorizes the appropriation of funds in the amount of $1.5 million for each of the fiscal years 1977 and 1978; and

Fourth, directs the payment of 80 percent of the cost of transporting hay—not to exceed $50 per ton—from areas in which hay is in plentiful supply to the affected emergency areas under the emergency hay program.

DIRECT MARKETING PROGRAM

A program of direct marketing contains the promise of substantial economic benefits to the Nation. The program will aid smaller farmers, whose farms are interspersed with urban concentrations throughout the more populated areas of the country, to stay in business. The program will make it possible for more consumers to purchase fresh, field-ripened produce, often at lower prices than are otherwise available. Although the bill places primary reliance upon private individuals and groups to take initiatives toward new methods of direct marketing,